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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 326

ESSO STANDARD OIL COMPANY, *et als.*,
Appellants,

v.

CARL HOLDERMAN, Commissioner, Department of Labor and Industry, State of New Jersey,
Appellee;

HUMBLE OIL & REFINING COMPANY (formerly Esso Standard Oil Company), *et als.*,
Appellants,

v.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

JURISDICTIONAL STATEMENT.

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Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

JURISDICTIONAL STATEMENT.

Appellants appeal from the final judgment of the Supreme Court of the State of New Jersey entered by Mandate on Affirmance dated March 4, 1963, concerning which an order denying appellants' petition for rehearing was entered March 25, 1963, affirming the declaratory judgment entered September 24, 1962, by the Appellate Division, Superior Court of New Jersey, adjudicating as valid, lawful

and subsisting certain regulations promulgated by the Commissioner of Labor and Industry of the State of New Jersey, and respectfully submit this Statement to show that the Supreme Court of the United States has jurisdiction of the Appeal and that a substantial question is presented.

Opinion Below.

The opinion of the Appellate Division, Superior Court of New Jersey, is reported at 75 N. J. Super. 455, 183 A. 2d 454 (1962). The *per curiam* opinion of the Supreme Court of New Jersey, affirming on the judgment below, is reported at 39 N. J. 355, 188 A. 2d 599 (1963). Copies of these opinions are attached hereto, Appendix, *infra*, pp. 1a-25a. An earlier opinion of the Appellate Division, remanding the actions for administrative hearing, is reported at 54 N. J. Super. 260, 148 A. 2d 728 (1959). The Findings of Fact and Conclusions of Raymond F. Male, Commissioner, following the administrative hearings are not reported, but do appear in the certified record.

Jurisdiction.

These actions were brought pursuant to Rule 4:88-10 of The Revision of the Rules Governing the Courts of the State of New Jersey (1953)*, seeking declaratory judgments with respect to the validity of certain regulatory action of the Commissioner of Labor and Industry of the State of New Jersey, and praying for an injunction against the enforcement of such action. The judgment of the Supreme Court of New Jersey was entered on March 4, 1963. A petition for rehearing was denied by that Court by order entered March 25, 1963. Notice of appeal to this Court was filed in the Supreme Court of New Jersey on

* Hereinafter cited "R. R."

June 3, 1963. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by 28 U. S. C. §1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

> *Dohnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282 (1921); *Bryant* v. *Zimmerman*, 278 U. S. 63 (1928); *Atchison, Topeka & Santa Fe Ry. Co.* v. *Public Utilities Commission*, 346 U. S. 346 (1953); *Metlakatla Indian Community Annette Island Reserve* v. *Egan*, 363 U. S. 555 (1960); *Marcus* v. *Search Warrants of Property, etc.*, 367 U. S. 717 (1961).

Constitutional and Statutory Provisions Involved.

The Fourteenth Amendment to the Constitution of the United States provides:

> "* * *; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The New Jersey Revised Statutes provide:

> R. S. 34:1-9. "The commissioner [of Labor and Industry] shall be the appointing authority of the department and shall in accordance with the civil service laws employ such inspectors, clerks, stenographers and other personnel as he may consider necessary and shall fix the salaries of officers and employees, subject to the provisions of Title 11, Civil Service, except where otherwise provided by statute. He may assign or transfer clerks, stenographers and inspectors from one bureau to another or combine

the clerical force of two or more bureaus as may be necessary or advisable. He may require from one bureau assistance in the work of another bureau. He may abolish any office or position which in his judgment it may be unnecessary to retain.

"The organization of the department is intended to facilitate the economical and efficient performance of its work and not to impair the control or responsibility of the commissioner."

R. S. 34:1-20. "The commissioner [of Labor and Industry] may make and publish rules and regulations not inconsistent with law as he shall deem necessary to enforce the provisions of this title."

N. J. S. 34:1A-3. "The commissioner [of Labor and Industry], as head of the department, shall:

"• • •

"(e) Adopt, issue and promulgate, in the name of the department, such rules and regulations as may be authorized by law;

"(f) Formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the department, its officers and employees;

"• • •"

It should be noted that the New Jersey Constitution does not contain a "due process" clause or an "equal protection" clause.

Questions Presented.

1. Whether the statutory delegation of legislative authority to an administrative official contravenes the guarantee of due process where the only standards prescribed

are: "as he [the administrative official] shall deem necessary"; "as may be authorized by law"; and "for the efficient conduct of the work and general administration."

2. Whether the proposed use of accident reporting forms in adversary litigation in which the reporting employer is a party denies to the employer thus reporting the guarantees of due process of law and the equal protection of the laws of the Fourteenth Amendment to the United States Constitution.

3. Whether the adjudication of validity of regulations failing to provide a penalty for the violation of said regulations, coupled with the availability of various penalties in the labor statutes said to be the source of authority for the regulation, including criminal sanctions, denies the due process of law guarantee of the Fourteenth Amendment to the United States Constitution.

4. Whether the conduct by the appellee of the judicially ordered administrative hearing denied to the appellants the due process of law guarantee of the Fourteenth Amendment to the United States Constitution.

Statement.

1. The Nature of the Actions and Proceedings Below.

From the enactment in 1924 of three specific statutes commonly referred to as the Accident Reporting Act (R. S. 34:15-96, -97, and -98) until 1958, the Commissioner of Labor and Industry in New Jersey had required industrial accident reports from employers only in terms of the requirements of these particular statutes. In 1958, he introduced a radically new and far-reaching accident reporting

concept by promulgating a regulation requiring the report of "• • • substantially every accident and disability." *New Jersey Manufacturers Casualty Insurance Company* v. *Holderman*, 54 N. J. Super. 260, 148 A. 2d 728 (App. Div. 1959). The industrial community promptly objected. Class actions on behalf of insurance companies, insured employers, and self-insured employers, were instituted in accordance with The Revision of the Rules Governing the Courts of the State of New Jersey (1953) in declaratory judgment actions seeking pronouncement of the invalidity of this regulation and praying for an injunction against its enforcement.

The promulgation of the regulation had not been preceded by any agency hearing. The defendant Commissioner included in his answering pleading a "record" consisting of a "statement" by the Commissioner and six brief and general affidavits by various division, bureau and section administrators. On motion of plaintiffs to strike this purported record, the matter was remanded for public hearing. *New Jersey Manufacturers Casualty Insurance Company* v. *Holderman*, 54 N. J. Super. 260, 148 A. 2d 728 (1959).

A public hearing before the defendant Commissioner followed, during the course of which the Commissioner consistently refused to allow the introduction of or to consider any "legal issues." (A typical example of this conduct may be found in the transcript of these hearings at page 46, line 12, where the Commissioner advised, "• • • I'm not going to determine any of the legal points at issue here, you've got a competent court to determine that.")

Only one procedural aspect of the administrative hearing need be here discussed. The Deputy Attorney General

appearing at the hearing as counsel for the defendant-hearing officer Commissioner introduced testimony from various department heads designed in general to show the reasonableness of and necessity for the proposed regulation. When the plaintiffs offered subordinates of these witnesses to refute such testimony, the defendant-hearing officer refused to permit these witnesses to be sworn or this testimony to be received.

Following the hearing, the Commissioner issued a "Record and Findings of Fact and Conclusions" which, in effect, found his own regulation to be reasonable. This effort also eschewed the consideration of legal issues, holding the sole purpose of the hearing to be a determination of the reasonableness of the proposed forms. The prior regulation was reiterated with little change.

The Appellate Division of the Superior Court of New Jersey, in its original jurisdiction over declaratory judgment actions of this nature, held the regulation to be "* * * valid, lawful and subsisting in all respects * * *" and denied injunctive relief. Appendix, p. 24a.

A timely appeal was taken by the plaintiffs to the Supreme Court of New Jersey. In lieu of filing an answering brief, the Attorney General, counsel for the defendant, filed a motion to dismiss the appeal, urging, in accordance with New Jersey procedure, that inasmuch as there was no dissent in the Appellate Division, appeal would lie only in the case of the showing of a substantial constitutional question. Defendant argued that there was no substantial constitutional question in the instant actions. Defendant's motion was "held" by order of the Supreme Court of New Jersey, the appeal was listed for oral argument, and was ultimately decided on the merits. The opinion of the

Supreme Court affirmed *per curiam* the opinion of the Appellate Division for the reasons expressed therein. Appendix, p. 25a.

Three aspects of the Court's opinion are notable:

First, it has held that the statutes set forth above, when "taken in the context of all other pertinent provisions" of all the statutes of New Jersey having to do with the regulation of Labor and Workmen's Compensation, prescribe sufficient standards, in connection with the problem of legislative delegation, to "accord with constitutional principles." Appendix, p. 19a.

Second, it has held that informational accident reports, provided by an employer for engineering and safety purposes to the bureau concerned therewith, may be turned over to and used by another division of the Department of Labor and Industry for "appropriate purposes" in an adversary hearing wherein the reporting employer is one of the parties. Appendix, p. 16a. No such reporting is required of the parties adverse to the employer in this type hearing.

Third, it is silent with respect to the absence of penalty provision in the regulation under attack, despite the fact that the statutes said to be a source of authority for the regulation contain a number of different penalties conceivably applicable, ranging from small monetary penalties to conviction for a crime.

2. Presentation of the Federal Question.

Foremost among the federal questions here presented is the due process issue concerning the delegation of legislative authority and the collateral examination of purported standards. The proper presentation of this question below

is best demonstrated by the fact that the Supreme Court of New Jersey, the highest Court of the State, in its adoption of the opinion of the Appellate Division (Appendix, p. 25a), has passed upon the question. "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it." *Raley* v. *State of Ohio*, 360 U. S. 423, 436 (1959).

The Appellate Division opinion points out that the constitutional mandate of legally sufficient standards in legislative delegation announced in the "famous decisions in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935) and *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495 (1935)" was "stressed by present plaintiffs [appellants here]." It then refuses to apply the rule of those cases, declaring that in the light of more recent authority, these decisions of the Supreme Court of the United States are "apt to wither on the vine as authorities inimical to delegative flexibility." Appendix, p. 18a.

Additionally demonstrative of the fact that the Supreme Court of New Jersey considered the federal constitutional questions presented is its treatment of the motion of the defendant in that Court to dismiss. As noted above, the rules of civil procedure in New Jersey permit appeal from the Appellate Division in civil actions as of right only when there is a dissent in the Appellate Division or when a question arising under the Constitution of the United States or the State of New Jersey is involved. *R. R.* 1:2-1. Analogously with federal procedure, state case law proclaims that in order to satisfy these requirements, any constitutional question must be a substantial one. *Starego* v. *Soboliski*, 11 N. J. 29, 93 A. 2d 169 (1952). Well aware of a purported procedural objection, the Attorney General

forewent his opportunity to file an answering brief on this appeal, and by motion sought instead a dismissal on the ground that no substantial constitutional question was presented. The Supreme Court refused to dismiss, holding the motion until oral argument and then deciding the matter on the merits.

Nor can it now be argued that this recognition of constitutional issues was limited to the Constitution of New Jersey. The only constitutional point raised by appellants with respect to the New Jersey Constitution concerned the article decreeing a separation of powers between branches of government. Were it to be argued that this was the constitutional issue being decided by the Supreme Court of New Jersey, it would require an admission that this was precisely the same *federal* constitutional issue involved in the *Panama Refining* and *Schechter* cases, expressly said to have been "stressed by [the] plaintiffs." The New Jersey Constitution has no "due process" clause.

The unconstitutionality of the contested regulation was first alleged in the initial pleadings. Assertions of repugnancy to the Constitution of the United States are to be found in the original petition in the matter of *Esso Standard Oil Company, et als.* v. *Holderman*, paragraphs 9 and 10; in the amended petition in that action, paragraphs 12 and 13; in the petition in the matter of *New Jersey Manufacturers Casualty Insurance Company, et als.* v. *Male* (here *Humble Oil & Refining Company* v. *Male*) filed subsequent to the administrative hearing and in which the present appellants were among the plaintiffs, paragraphs 10 (o), (p), (q), (y), (bb) and (dd) as incorporated in paragraph 12 (a), and paragraph 12 (l). From the stand-

point of pleading, the constitutional issues have been an obvious and major part of the litigation from the beginning.

As noted above, plaintiffs were affirmatively denied the opportunity to present constitutional issues at the administrative hearing to which the issues were remanded. The Commissioner, as hearing officer, consistently refused to consider that which he conceived to be "legal issues." In this regard, the attention of the Court is respectfully invited to references from the transcript of the administrative hearing as follows: p. 46, line 12, quoted above; p. 297, line 6, "• • • I am not here certainly to decide the question of legalities." Particularly revealing in this context are the statements of the Commissioner appearing at p. 1210, line 19 and p. 1219, line 19 of the transcript. The plaintiffs were cross examining a witness of the defendant who is a Deputy Director of the Division of Workmen's Compensation, a subordinate Division of the Department of Labor and Industry. The witness had testified that he had been a member of a committee which studied, among other things, the need for and design of the forms contemplated by the questioned regulation. He related that in the course of this committee work he had agreed with recommendations of an independent study made previously by an individual. He was asked on cross examination whether this agreement with the prior study included a concurrence with the recommendation of that study that a statutory change was necessary. An objection to this question was sustained, the Commissioner saying, "I think that it has been agreed from the very first day of the hearing that we are not here in this room to determine legality. • • • It is not my function. I said I have no competency to determine that." Transcript, p. 1210, line 19. Later he added, "The legal issues,

the statutory basis here or any other statutory jurisdiction that you may wish to question, I am sure will be proper to consider when the Attorney General is before the court. That is not something which I feel I have competence, nor is it my province." Transcript, p. 1220, line 1.

The adamancy of this position was well demonstrated by the determination of facts and conclusions which followed the hearing. These candidly announced that the "sole purpose" of the administrative hearing was to determine "on an administrative level the reasonableness of the forms • • •." *Findings of Facts and Conclusions of Raymond F. Male, Commissioner*, p. 2, 1st full paragraph.

Plaintiffs were required to present the substantial federal constitutional questions to the Appellate Division in a legal and factual vacuum, so to speak. The Commissioner at the hearing would not listen.

Such a presentation was made, nonetheless, both to the Appellate Division and to the Supreme Court on review. Counsel for the appellants have requested that all briefs before both Courts be included in the record. Notice of Appeal, p. 4.

Without belaboring the matter, in view of the actual determination of the question by the New Jersey Supreme Court as pointed out above, it should be noted that the first point presented in the Appellants' brief before the Appellate Division complains against the lack of due process by virtue of the failure to circumscribe this purported delegation of legislative authority by constitutionally adequate standards. This is the stressing of the doctrine of the *Panama Refining* and *Schechter* cases noted and rejected by the New Jersey Courts. The first three stated

questions in the Statement of Questions Involved in the brief before the New Jersey Supreme Court pointedly raised the constitutional issue of standards in purported legislative delegation. Plaintiffs' Brief Before New Jersey Supreme Court, p. 1.

All other constitutional objections presented here were also raised no later than at the administrative hearing.

There the plaintiffs complained in depth of the proposal of the Department to use informational reports, said to be required for engineering and safety purposes, as admissions against the interest of the reporting employer in workmen's compensation hearings—an adversary proceeding—held in another subordinate agency of the Department of Labor and Industry different from the Bureau of Engineering and Safety. An entire section of the brief before the Appellate Division was devoted to this complaint. Plaintiffs' Appellate Division Brief, Point VI-B, p. 190 *et seq.* Due process objections were specifically stated. *Ibid.* p. 194. Inasmuch as no regulation required like reports from the party adverse to the reporting employers in the workmen's compensation hearings, the denial of equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States was specifically charged. *Ibid.* p. 194. This federal constitutional issue was also expressly decided. Despite the recognition of the New Jersey Courts that such reports were "informational reports" (Appendix, p. 16a), they could conceive of "no possible objection" to the "concomitant use of the information contained therein for the appropriate purposes of any other agency [than the Bureau of Engineering and Safety with which this particular form is filed] in the Department." Appendix, p. 16a. The use of the forms "in prosecution of a formally litigated

claim" against the reporting employer is contemplated. Appendix, p. 22a. The record amply supports, and we are certain it will not and cannot be disputed, that the Workmen's Compensation Division is an "other agency in the Department," and that among its functions is the conduct of adversary hearings in most of which the reporting employers are a party.

At the administrative hearing the plaintiffs inquired in vain to discover what penalty might be imposed for noncompliance. The regulation itself imposes none. Other statutes, among those which "in context" were later held to be the fountainhead of the Commissioner's ostensible authority in this regard, impose numerous and differing penalties, including criminal sanctions, for non-reporting of accidents in accordance with certain specific statutes. (*E.g.* R.S. 34:15-101, R.S. 34:1-53, R.S. 34:6-98.9 (b), R.S. 26:4-41.) Neither the administrative officials at the hearing, nor the Court later, offered any assistance. Typical of the hearing evidence in this regard was the testimony of Thomas L. Franklin, Acting Director of the Division of Workmen's Compensation. He suggested the imposition of any sanction " • • • appropriate and available to the Commissioner." Transcript, p. 2311, line 18. He then suggested one particular sanction. Transcript, p. 2311, line 22. He concluded by warning that if anyone believed the sanction he had suggested "• • • was exclusive, I would like to disabuse the record of that fact." Transcript, p. 2312, line 23. The constitutional problem thus engendered was specifically raised in the Appellate Division brief. Plaintiffs' Appellate Division Brief, p. 125 *et seq.* It was reiterated in the brief before the Supreme Court of New Jersey. Plaintiffs' Supreme Court Brief, p. 73 *et seq.* The opinion below is silent with respect to the problem.

It was repeated, precisely and succinctly, in plaintiffs' Petition for Rehearing to the Supreme Court of New Jersey (Point II, p. 4 *et seq.*), to no avail. Appendix, p. 30a.

With final respect to presentation of the federal constitutional questions, the due process objections of the plaintiffs to the essential unfairness of the administrative hearings are to be noted. One example will suffice: the Attorney General, representing the Commissioner of Labor and Industry who was both defendant and hearing officer, presented the heads of several subordinate bureaus and divisions of the Department to testify with respect to needs and reasonableness. He also presented several chosen subordinates. Transcript, pp. 48, 132, 584, 1151, 1309, 1394, 1420, 1785, 1794, 1949, 1985. The plaintiffs subpoenaed and called employees of the various departments to refute the testimony thus presented by the Commissioner. The Commissioner refused to permit these witnesses to testify, and in fact, noted his ruling would apply to any offer of any of "• • • the approximately three thousand employees of the Department of Labor and Industry." Transcript, p. 2924, line 11. The constitutional objection was noted at length in plaintiffs' Appellate Division brief, and thus raised before that Court:

> "In sum, the Commissioner, as a defendant, enjoyed every latitude. In addition to selecting the formal procedure, he was allowed to introduce matter without limitation. Following this, the plaintiffs' opportunity for impeachment was reduced to a minimum when they were refused the opportunity to examine the source. • • •" Plaintiffs' Appellate Division Brief, Point V-C and D, p. 187.

The objection was again raised in the Supreme Court. Plaintiffs' Supreme Court Brief, p. 78. The opinion below is silent with respect to this objection.

The Questions Are Substantial.

1. The Standards Question.

It is beyond question that at one time it was thought the rule making power of the legislature could not be delegated to administrative authority without adequate and definitive standards to guide the administrator's action. *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935); *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495 (1935). To do otherwise offended due process.

The Supreme Court of New Jersey has held in this case that these important decisions are "• • • in the opinion of competent students, • • • apt to wither on the vine as authorities inimical to delegative flexibility." Appendix, p. 18a. It arrived at this conclusion by the sole federal support of two subsequent decisions of the Supreme Court of the United States, the broadness of each of which was candidly stated to be a wartime exigency. *Yakus* v. *United States*, 321 U. S. 414 (1944); *Lichter* v. *United States*, 334 U. S. 742 (1948).

Acting accordingly, the Supreme Court of New Jersey has approved a delegation of rule making authority to the Commissioner of Labor and Industry circumscribed, in effect, only by the standard of the judgment of the administrator. Literally set forth, the standards said to be adequate confine the Commissioner only to that which "he shall deem necessary" (R. S. 34:1-20), "for the efficient conduct of the work and general administration of the department, its officers and employees" (N. J. S. 34:1A-3(f)). An additional catchall of "as may be authorized by law" appears. (N. J. S. 34:1A-3(e).)

The substantiality of the complaint of plaintiffs does not rest on enormity of action. The plaintiffs have com-

plained at the proper time and at the proper place of that which they believe to be unreasonable and arbitrary. Admittedly a contrary finding below has concluded that issue. Plaintiffs submit, however, that the details of the administrative action are, in a relative sense, unimportant. As said in *Panama Refining* v. *Ryan, supra,* at p. 430:

> "The question is not of the intrinsic importance of the particular statute before us, but of the constitutional processes of legislation which are an essential part of our system of government."

The substantial issue to be here decided is whether an administrative official is constitutionally able, under guise of a "flexibility" doctrine of legislative delegation, to impose his whim upon those subject to his control. The substantiality is reflected in the breadth of standards deemed to permit any action thought by the administrator to be useful.

"Power," Madison noted, "is of an encroaching nature, and * * * it ought to be effectively restrained from passing the limits assigned to it." *The Federalist XLVIII, Universal Classics Library Ed.,* Vol. 1, p. 338.

The Supreme Court of New Jersey not only has avoided the application of such restraint, but has sanctioned its antithesis. It has permitted the standard to be set by him upon whom the standard should be imposed.

Remarkably akin factually to the "* * * roving commission to inquire into evils and upon discovery correct them" of the *Schechter* case, the assumed power in the instant actions, confined as it is only by the judgment of the administrator, is certainly the "delegation running riot" of that same case.

The insidious nature of such a standard has been condemned before. It can well be described as one of "'* * *

no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice • • • unknown to our constitution and laws; • • • [it would be] destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing where the practice under it would end.'" *Jones* v. *Securities and Exchange Commission*, 297 U. S. 1, 27 (1936), quoting from *In re Pacific Ry. Comm.*, 32 F. 241.

If such standard is permitted constitutionally to control legislative delegation, the long-cherished "government of laws and not of men" (*Anheuser-Busch* v. *Walton*, 135 Me. 57, 190 A. 297, 301 (1937)) must eventually disappear. This question is as substantial as that.

2. The Illegality of Proposed Departmental Use of Forms.

The proposed regulations require all employers in the State of New Jersey to furnish detailed information with respect to substantially all accidents and occupational injuries. Testimony was received from each of the subordinate agencies in the Department of Labor and Industry to indicate the areas of particular need in each for certain of the information. General use by all subordinate agencies of all the information, regardless of "need," is now proposed. It was frankly admitted at the hearing that such use would make available to the hearing officer in contested workmen's compensation cases in the Workmen's Compensation Division of the Department of Labor and Industry all reports thus filed by the reporting employer. This availability of extra-evidential material to a hearing officer in a contested proceeding between employer and employee was condoned by the New Jersey Courts. "Presumably the report [L&I-1, essentially an engineering and safety report] will be made available for purposes

of administration of the Workmen's Compensation Act and other agencies in the Department, although required to be first filed with the Bureau of Engineering and Safety." Appendix, p. 8a. The opinion below encouraged the use of certain of the forms "* * * in prosecution of a formally litigated claim." Appendix, p. 22a. Without regard for the considerations of essential fair play, the real touchstone of due process, the use of extra-evidential material by hearing officials is universally condemned as a patent violation of due process. *Gonzales* v. *United States*, 348 U. S. 407 (1955). Compare the "cherished rights" of *Greene* v. *McElroy*, 360 U. S. 474 (1959). If the New Jersey Courts are correct, an employer must suggest to its employee the existence of a claim against the employer, must furnish the employee with an investigation to be used "in prosecution of [the] claim," and must face the prospect of being confronted in adversary litigation with evidence it has been required to prepare for the adverse party. As a final constitutional indignity, it appears that the information thus supplied might well be used at the time of the hearing without the knowledge of the employer, since it will, as a matter of course in every case, be included in the hearing officer's file.

It should also be noted that there is no correlative obligation imposed upon the employee, the adverse party in the litigation. The problem is also one of equal protection.

As indicated in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 420, "The point is not one of motives, but of constitutional authority, for which the best of motives is not a substitute." As pointed out in the dissent in *United States* v. *Sharpnack*, 355 U. S. 286, 299 (1958), "[C]onvenience is not material to the constitutional problem."

The present controversy, as in the *Panama Refining* case, relates to that which appears to be a simple delegation

of rule-making authority; the basic question has a much wider application.

3. The Question of Penalty.

The controverted regulation provides no penalty clause. Officials of the Department of Labor and Industry have contended that penal sanctions are available from all the statutes controlling labor and workmen's compensation. These statutes, as noted above, make available various and different penalties for noncompliance with specific provisions in which particular accident reports or other informational reports are required. The administrator refused to advise with respect to the sanction to be applied. The Court was silent as to the problem.

As suggested to both the Appellate Division and the Supreme Court below, it is respectfully submitted here that to force an employer to risk imprisonment in order to determine the application of a law violates the first essential of due process of the law. *Connally* v. *General Construction Company*, 269 U. S. 385 (1926). Cf. *United States* v. *Eaton*, 144 U. S. 677 (1892); *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407 (1908).

4. Essential Unfairness in the Hearing.

As detailed above, at the administrative hearing, plaintiffs offered the testimony of a number of employees of the Department of Labor and Industry designed to refute testimony from other employees previously called by defendant's counsel. The defendant-hearing officer sustained his counsel's objection to this offer and refused to receive testimony from these or any other employee of the Department. This typical conduct was certainly less justifiable than that condemned in *Morgan* v. *United States*, 304 U. S. 1 (1938), and warrants the protection of plaintiffs by this Court.

Conclusion.

It is respectfully submitted that this Court has jurisdiction in this appeal, that the federal constitutional questions were properly raised and presented below and were decided below, and that the questions are so substantial as to require plenary consideration by this Court.

Respectfully submitted,

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John W. Fritz
Attorneys for Appellants

APPENDIX.

Opinion of Appellate Division.

Superior Court of New Jersey

APPELLATE DIVISION.

A-60-58; A-68-58; A-995-59.

ESSO STANDARD OIL COMPANY, *et al.*,
Plaintiffs,
vs.
CARL HOLDERMAN, Commissioner, Department of Labor and Industry, State of New Jersey,
Defendant.

NEW JERSEY MANUFACTURERS CASUALTY INSURANCE COMPANY, *et al.*,
Plaintiffs,
vs.
CARL HOLDERMAN, Commissioner, Department of Labor and Industry, State of New Jersey,
Defendant.

NEW JERSEY MANUFACTURERS CASUALTY INSURANCE COMPANY, *et al.*,
Plaintiffs,
vs.
RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,
Defendant.

Civil Action.
Opinion.

Argued January 29, 1962—Decided July 12, 1962.

Opinion of Appellate Division.

The opinion of the court was delivered by CONFORD, S. J. A. D.

These are consolidated declaratory judgment proceedings brought in this court pursuant to R. R. 4:88-10 attacking the validity and reasonableness of certain orders of the late Commissioner of Labor and Industry, Carl Holderman, revising the requirements for the reporting of industrial accidents and compensable occupational diseases. Plaintiffs sue as representatives of affected insurance companies carrying workmen's compensation liability coverage, insured employers and self-insured employers. This court heretofore settled the procedure for the making of the record herein in *New Jersey Mfrs. Cas. Ins. Co.* v. *Holderman*, 54 N. J. Super. 260 (App. Div. 1959), wherein a fuller description of the background of this action will be found. Subsequently, Commissioner Holderman died, and Commissioner Raymond F. Male assumed office as his successor. He conducted the hearings ordered by this court at various times between December 15, 1959 and February 26, 1960, in the course of which there was amassed a record of testimony and exhibits which, together with the findings and other pleadings in this matter, comprises a printed record of almost 3,000 pages. At the conclusion of the hearings the Commissioner filed his "Findings of Fact and Conclusions," wherein he determined that the prescribed forms and regulations were reasonable and necessary for the conduct of several agencies in the Department, but ordered certain modifications to accord with what he found to be constructive suggestions and views by both sides during the hearings.

The processing of this litigation and its submission to the court were unfortunately delayed not only by the circumstance of the transition of official responsibility in the office of the respondent, but also by illnesses and substitutions of counsel on one side or the other and negotiations

for settlement of the dispute which it was represented to the court during the proceedings promised a fair prospect of success. While it appears that substantial concessions were made by the respondent to meet the objections of plaintiffs, the latter remain basically dissatisfied, as indicated at argument, in two substantial respects: (1) the requirement for submission of medical information and diagnoses to the Division of Workmen's Compensation and to injured employees; and (2) the requirement, as to self-insured employers, for early initial reporting of accidents, *i.e.*, at the same time as insured employers, in place of the requirement in R. S. 34:15-97, which calls for reporting immediately upon knowledge of an accident (or compensable occupational disease) causing disability extending beyond the seven-day waiting period or any permanent injury.

The final adoption by Commissioner Holderman of the revised forms of accident reporting on October 1, 1958 was preceded by a long period of study and analysis within the Department of Labor and Industry, as well as of consultation and exchange of viewpoints with representatives of employers and insurance carriers, beginning early in 1956, when the Commissioner enlisted the advice of Dr. Monroe Berkowitz, a member of the faculty of the Department of Economics of Rutgers University, relative to improvement of administrative procedures in various divisions and bureaus of the Department of Labor and Industry, particularly as to the processing of workmen's compensation claims. Dr. Berkowitz made three reports to the Department on the subject, the last on July 12, 1956. He found many of the procedures antiquated, inefficient and functionally obsolete, particularly in respect of record keeping, filing and cross-referral both in the Division of Workmen's Compensation and in other agencies in the Department concerned with matters of worker welfare, safety and accident statistics. He made specific recommendations, including the basic substance of the accident report forms now in controversy.

In part, however, these were designed to reduce or eliminate unnecessary or duplicative reporting of accidents or of information relating thereto by employers and insurers.

The recommendations were studied by administrative officials in the Department with a view toward regulatory implementation, consultants including key personnel in the Division of Workmen's Compensation and representatives of agencies having responsibility for safety and industrial accident prevention, rehabilitation of injured workers, accident statistics, and supervision of laws concerning the welfare of female and minor workers. There was a consensus that earlier reporting by self-insured employers, reorganization of the information on the forms, and the expanded medical information required would subserve better administration of statutory objectives, particularly in the Division of Workmen's Compensation and the Bureau of Engineering and Safety. See *infra*. While no formal or public hearings were conducted by Commissioner Holderman relative to the adoption of the proposed new accident reporting requirements, it is indubitable that all representative industry, employer and insurance groups or associations were consulted in advance of promulgation, their views solicited, and some of their suggestions reflected in the content of the forms finally adopted by him.

In view of the substantial narrowing of the dispute herein at argument to the two basic new requirements of the revised report forms, as noted above, we find it unnecessary to catalogue in detail the various types of reports required before and after the directive under review. Previously, the reports required substantially accorded with the specifications of R. S. 34:15-96 to 102, inclusive (sometimes referred to as the Accident Reporting Act). It will be helpful here to set forth the full text of this statute (for ease of identification we supply the revisers' headings):

"34:15-96. *Reports of accident*

Every employer carrying insurance as required by article 5 of this chapter (§34:15-70 *et seq.*) shall

make report in accordance with the terms of his insurance policy upon the happening of any accident or the occurrence of any compensable occupational disease in his establishment. Such report shall be prepared in triplicate upon a form, designated as 'first notice of accident', to be furnished by the insurance carrier. One copy shall be sent to the department of labor, one copy to the insurance carrier, and one copy shall be kept on file by the employer. A supplemental report shall be prepared on a form designated as 'supplemental report', and sent in like manner, at the expiration of the waiting period prescribed by section 34:15-14 of this title. If, however, the employee is able to resume work before the expiration of the waiting period, the supplemental report shall be sent immediately upon his return. Thereafter the employer shall promptly furnish the carrier the information demanded and necessary to enable it to carry out the intent of this chapter. These reports on the first notice and supplemental forms, filed with the state, must be signed by the employer and mailed by him directly to the workmen's compensation bureau, as a check on the operations of the insurance company."

"34:15-97. *Report by employer not carrying insurance*

An employer not carrying compensation insurance shall make report of any accident or compensable occupational disease causing a disability extending beyond the waiting period or causing any permanent injury. The report shall be prepared and sent immediately upon the employer's having knowledge of the disability or injury named above, and shall be made out in duplicate upon forms to be secured from the workmen's compensation bureau.

One copy shall be mailed to the bureau and one copy kept on file by the employer. Within three weeks after the accident, or the obtaining of knowledge of compensable occupational disease, the employer operating under article 2 of this chapter (§34:15-7 *et seq.*), shall send to the bureau a second report, containing a statement of wages and an agreement to care for the case according to the terms of the compensation law. This form shall be signed by the employee as provided thereon and by the employer. Immediately upon the employee's recovering so as to be able to resume work, the employer shall file with the bureau a final report, setting forth the length of disability, the nature and extent of permanent injury, if any, and the compensation payable for each. This form shall also be signed by the employer and the employee."

"34:15-98. *Report by insurance carrier*

Every insurance carrier writing workmen's compensation insurance in this state shall make report of accident, or compensable occupational disease, as follows: Immediately upon receiving knowledge of an accident to an employee, or the contracting of a compensable occupational disease, causing a disability extending beyond the waiting period or causing any permanent injury, the company insuring the employer of such employee, shall at once make report to the workmen's compensation bureau on a form prescribed by the bureau. Within three weeks after the carrier has learned of the accident or the contraction of such disease, such carrier shall send to the bureau a second report containing a statement of wages and an agreement to care for the case according to the terms of the compensation law. This report shall be signed by the employee as provided thereon and by the employer or insurance

carrier. Immediately upon the carrier's learning that the employee has recovered so as to be able to resume work, the carrier shall prepare a final report, and take the steps necessary to have it signed by the employee, as provided thereon. This form shall also be signed by the employer or carrier and sent to the bureau as promptly as possible. When an employee refuses to sign any of the required forms, that fact shall be noted on the blank at the point where the signature should be placed, and the forms filed with the bureau. These forms shall be fully prepared before presentation to the employee for his signature. It shall be unlawful to request or direct any injured employee to sign blank forms to be later filled out and filed with the bureau."

"34:15-99. *Report not public*

The first reports of accidents filed with the workmen's compensation bureau, shall not be made public, and shall not be open to inspection unless, in the opinion of the commissioner of labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by an employee for the recovery of damages."

"34:15-100. *Medical reports*

As a part of the necessary medical service required by the compensation law, the employer or insurance carrier shall, when directed so to do, file with the workmen's compensation bureau copies of such medical certificates or reports as it may have on file."

"34:15-101. *Penalty for noncompliance*

Every employer, insurer or other person failing to comply with the terms of this article shall, for each offense, be liable to a penalty of not less than ten nor more than fifty dollars, the amount thereof to

be determined by and paid to the commissioner of labor. Upon refusal to pay such fine, the same shall be recovered in an action at law by the commissioner of labor in the name of the state of New Jersey."

"34:15-102. *Rules and regulations; agreements filed*

The workmen's compensation bureau is authorized to make such rules and regulations as may be necessary to carry out the purpose of this article and the bureau is hereby directed to keep on file the agreements filed with it for a period of eight years. Any agreement, however, covering a period greater than eight years shall be kept on file for the full term of the agreement."

I

We address our attention first to the objections by the self-insurers to the reports required to be made by them under the order complained of. Preliminarily, we note that between 13% and 15% of all workers in the State are employed by self-insured employers. Essentially, the objection is to the earliness of the initial report, designated by the revised order as form L & I-1, required of both insured and self-insured employers. This must be filed with the Bureau of Engineering and Safety no later than the start of the second workday after injury occurs, except that in case of a fatal or serious injury (one that requires hospitalization) it must be filed immediately. It is required in all cases where the injury causes a loss of time from regular duties beyond the working day or shift on which the accident occurred, or where medical treatment beyond ordinary first aid is required (or where an occupational disease exists whether or not time is lost). Presumably the report will be made available for purposes of administration of the Workmen's Compensation Act and other agencies in the Department, although required to be first filed with the Bureau of Engineering and Safety.

The contrast between the foregoing requirement and that imposed upon self-insured employers under R. S. 34:15-97 is clear insofar as degree of seriousness of an accidental injury is concerned, but not so clear in relation to time of reporting. The statutory report is to be sent "immediately" upon the employer's having knowledge of an accident causing any permanent injury or causing disability beyond the waiting period. Obviously, depending upon the employer's unilateral appraisal of the seriousness of the accident and his good faith in discharging his statutory obligation, many accidents which should be reported at once by an uninsured employer may not be. Clearly, the seven-day waiting period is not necessarily required to pass before an employer knows that because of the seriousness or nature of the injury there will be a disability lasting beyond the waiting period. Moreover, it appears from the proofs that where accidents which should be reported eventually (under the statute) are not reported at once, they may in some cases be withheld from report indefinitely or entirely, thereby promoting the likelihood that injured workers might not receive the full amount of compensation due them, whether in the form of medical treatment, or temporary or permanent disability awards.

According to the testimony of former Director of the Division of Workmen's Compensation, Ned J. Parsekian, under the heretofore reporting practice by self-insured employers precisely such abuses obtained. He testified:

> "Q. Mr. Parsekian, do you know of any instances where an employee was involved in an accident, an employee of a self-insured employer was involved in an accident which caused a disability exceeding seven days, or which caused permanent injury, where an accident report form was not filed by the self-insured employer? A. Many such cases were reported to me as Director, where serious injuries

were incurred by workers on the job and no report was furnished of any kind to the Division.

Reports came to me as Director from the staff that people with serious injuries, such as fractured legs or arms, wheel chair cases, were brought to work by taxi or chauffeur, so that they would not register a day lost and it would not be necessary, under the rules, to report that there was a loss time injury to the Division."

Thus the administrative requirement of early reporting of all accidents of a specified objective degree of severity serves a self-policing function in assuring the filing in all compensable cases of the information specified by the statute.

There was also testimony that early reporting of the basic facts of an accident is more apt than later reporting to accurately memorialize all the pertinent information relating thereto for any of the proper purposes of the interested agencies of the Department.

Under the social philosophy underlying Workmen's Compensation legislation in this state the Division is not a mere quasi-judicial tribunal confined to the duty of deciding formally litigated claims. It is properly expected to take the initiative where necessary to assure the prompt and full provision for injured workers of all the statutory benefits to which they are entitled in a given case. In his comprehensive work, "Workmen's Compensation—The New Jersey Experience" (1960), Dr. Berkowitz quotes Max D. Kossoris (at p. 96) to the effect that " 'the primary objective of administration [of a compensation act] is to make sure that the law is observed and that an injured worker gets everything to which the law entitles him.' " (Kossoris, "An Appraisal," in *Workmen's Compensation in the United States*, U. S. Dept. of Labor, Bur. of Labor Statistics, Bull. No. 1149, 1954, p. 3). This object is the purpose of R. S.

34:15-50 which provides that settlement agreements between employers or insurance carriers and injured employees must be filed with the Division and are not binding on the parties unless approved; and that if an approved agreement has not been filed within 21 days after an injury the Division shall itself "endeavor to bring about a settlement of the pending claim." It may investigate why a settlement has not been effected, and, with the consent of the worker, may itself file a petition for compensation on his behalf. *Ibid.*

The Division (and its predecessor Workmen's Compensation Bureau) has long maintained an active program for informal resolution of compensation claims. More recently it instituted a system for review of direct settlements which has resulted in disclosures of many substantially inadequate settlement proposals. Material increases in such settlements resulted from the exercise by the Division of its statutory authority in this regard. The information in the accident report forms is properly used and usable against the parties not only in these settlement review proceedings and in the course of informal hearings looking to settlements (providing the parties are made aware thereof) but as admissions in formal hearings of litigated claims. See *Miller* v. *National Chair Co.*, 127 N. J. L. 414 (Sup. Ct. 1941) affirmed o.b. 129 N. J. L. 98 (E. & A. 1942); *Amend* v. *Amend*, 12 N. J. Super. 425 (Cty. Ct. 1950). The proofs in the case before us justify the inference that early filing of initial accident reports conduces appreciably to effectuating proper and adequate settlements and preventing approval of improper ones, considering the factors both of better assurance of availability of any reports from the employer at all (see *supra*) and greater likelihood of accurate and complete information when fresh in relation to the event.

Statutory authority for the regulations under review insofar as they are related to administration of the work of any agency in the Department is clear (we consider

infra the contention of plaintiffs that the Accident Reporting Act is exclusive of any authority in the Commissioner to make other reporting requirements). R. S. 34:1-20 provides: "The commissioner may make and publish rules and regulations not inconsistent with law as he shall deem necessary to enforce the provisions of this title." N. J. S. A. 34:1A-3, which derives from the act reorganizing the Department of Labor and Industry as now constituted (L. 1948, c. 446) provides that, "The commissioner, as head of the department, shall * * * (e) Adopt, issue and promulgate, in the name of the department, such rules and regulations as may be authorized by law; (f) Formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the department, its officers and employees." Insofar as concerns the referral of the L&I-1 reports and information contained therein from the Bureau of Engineering and Safety to the Division of Workmen's Compensation or other agencies for use there, this is authorized under R. S. 34:1-9, which gives the Commissioner power to utilize one bureau in assisting the work of another.

As to agencies of the Department of Labor and Industry other than the Division of Workmen's Compensation whose functions are asserted to be aided by the more comprehensive and timely accident information afforded by form L&I-1, we find, first, considerable testimony based upon the activities of the Bureau of Engineering and Safety. This agency administers the safety codes in manufacturing, construction trades and mines, which, collectively, comprise a large segment of accident-producing industry. By virtue of reorganization of the Department under L. 1948, c. 446, and administrative action pursuant thereto, there has been delegated to the Bureau a wide jurisdiction in inspection and similar services and functions as a result of which it has a continuous interest in promotion of industrial safety.

The analysis of causes of industrial accidents is a fundamental area of its administrative concern. The predecessor of form L&I-1, not previously available from self-insured employers, has been the only regular source of current notification of serious accidents available to that bureau. The head of the agency testified: "What we need are criteria that refer to correctable unsafe conditions, and the WC-1 form [same as L&I-1] report can be a clue to such a condition, and it may be a clue without regard to whether or not the injury in that particular case was a serious one. When the new criteria are established, we hope to include investigations of injuries which may have been minor, but where the fact that they were minor rather than major was [an] accidental occurrence in itself. These might be classified as a 'near miss accident.'" He said that in the kinds of accidents he would be interested in investigating (not necessarily correlative with the seriousness of an injury) the factory inspector should be notified the same day, and any investigation later than 10 days after the accident would not be likely to be valuable. Since at least 13% of workers are in self-insured industry, availability of timely accident information in that field was regarded as necessary for study of industrial accidents on an over-all basis.

Other testimony given on behalf of the State involved the relationship of prompt and adequately detailed accident reports to the work of the Wage and Hour Bureau, especially in relation to female and minor workers, to the Bureau of Records and Statistics, and to programs looking toward rehabilitation of injured workers. In all these respects, and perhaps others, as well as in relation to the statutory duty of the Commission to *report annually* to the Governor as to the work of his department, R. S. 34:1-19, there is established to our satisfaction a *prima facie* reasonable relationship between the accident reporting requirements here under attack and the proper performance by

the Commissioner and the agencies under his jurisdiction of their statutory duties and obligations, so as to justify the conclusion that he had the statutory power to promulgate the requirements under R. S. 34:1-9 and N. J. S. A. 34:1A-3 (e) and (f), taken in the context of all other pertinent provisions of Title 34.

Plaintiffs' major reliance for their thesis of illegality of the timing of the L&I-1 form in respect of self-insured employers, as noted, is that the Accident Reporting Act constitutes a specific regulation on the subject by the Legislature, preempting the field to the exclusion of jurisdiction thereof by the Commissioner through rules and regulations. The doctrine invoked is "*expressio unius est exclusio alterius.*" We do not, however, regard that rule of statutory construction as controlling here. At best, it is only an aid towards construction, always to be used with "great caution." *Gangemi* v. *Berry*, 25 N. J. 1, 11 (1957). The provisions in question date from L. 1924, c. 187. (Accident reporting statutes in this State go back to L. 1904, c. 64, §28.) Whatever the extent of the actual use of the forms filed pursuant thereto by the Division (and its predecessor Workmen's Compensation Bureau), it would not appear that by adoption of this act the Legislature intended anything more than minimum requisites for assurance of at least a degree of supervision by the State of compliance by employers and insurance companies with the Workmen's Compensation Act. Section 34:15-96 tends to show this by leaving the contents of the report by insured employers to the requirements of the policy, the form to be supplied by the carrier. The supplemental report is to be supplied at the expiration of the waiting period, or immediately if the worker resumes work earlier. Copies of the reports are required sent to the workmen's compensation bureau "as a check on the operations of the insurance company."

It is not reasonable to believe that the Legislature intended, by the enactment of requirements such as these,

or of the companion section dealing with self-insured employers (R. S. 34:15-97), that if in the course of its expanding and ongoing experience in administration of the act, as for example in reference to supervision of or inducing settlements pursuant to R. S. 34:15-50, the compensation bureau deemed it useful to have available fuller or earlier reports (within the limits of reasonableness) better to perform its statutory duties, the rigid, fixed specifications of the statute should stand in its way.

Plaintiffs contend that *Massie* v. *Court of Common Pleas of Monmouth*, 8 N. J. Misc. 600 (Sup. Ct. 1930), affirmed o. b. 108 N. J. L. 199 (E. & A. 1931), holds that the provisions of the Accident Reporting Act are exclusive of the regulatory jurisdiction of the Department. We do not so read the opinion. No such problem was presented. All the case held was that one of the sanctions then contained in the act for non-compliance-preclusion of plea of limitations—was enforceable against the employer when no report was filed after knowledge of injury (that sanction was subsequently repealed).

But if, perchance, a more stringent viewpoint as to the legislative intent were deemed to require us to foreclose enforced reporting to *the compensation Division* by self-insured employers in any manner other than specified by the Accident Reporting Act, no such conclusion can reasonably be reached in respect of administrative requirements for reporting information as to accidents to or on behalf of other agencies of the Department, such as the Bureau of Engineering and Safety, deemed necessary for the more efficient performance of their administrative duties. Certainly the Legislature never intended its enactment of the Accident Reporting Act to have restrictive effect on the adoption by the Department of regulations pertinent to industrial safety, accident prevention, rehabilitation of injured workers, collection and promulgation of statistics

for report to the Governor and Legislature, and the like. Form L&I-1 is required to be filed with the Bureau of Engineering and Safety. Once properly lodged for direct use there, no possible objection is perceivable or argued precluding concomitant use of the information contained therein for the appropriate purposes of any other agency in the Department.

In reaching the foregoing conclusions we have been guided by fairly recent pronouncements of this court in analogous circumstances. In both *Grenewicz* v. *Ligham*, 34 N. J. Super. 1 (App. Div. 1955) and *Daughters of Miriam Home* v. *Legalized Games, etc.*, 42 N. J. Super. 405 (App. Div. 1956) it was urged that regulations of administrative agencies were invalid because the Legislature had itself acted on the subject matter of the regulations by direct enactment; in both cases colorable arguments as to inconsistency between the respective statutes and regulations were advanced. But in both the contention was rejected. In the *Grenewicz* case Judge (now Mr. Justice) Francis stated: "The presumption is in favor of conformity [between legislation and regulations] * * *, and a regulation will not be set aside unless it is plainly and palpably inconsistent with the statute." (34 N. J. Super., at p. 9.) To the same effect was the opinion in the *Daughters of Miriam Home* case (42 N. J. Super., at p. 415), where the allegedly conflicting statute was adopted one month prior to adoption of the challenged regulation. The force of these decisions in their present application is augmented when it is considered that in those cases the attack was upon administrative regulations directly affecting substantive property rights whereas here the subject matter consists merely of procedural directives for the filing of informational reports.

Plaintiffs argue that the statutory provisions quoted above authorizing adoption of rules and regulations by

the Commissioner of Labor and Industry in fairly general terms are void for lack of standards specifying the type and scope of administrative rules to be adopted. Plaintiffs cite no New Jersey case wherein *procedural* rules like these adopted by an administrative agency under legislative authorization to adopt such rules and regulations as are necessary for the enforcement of the act administered by the agency have been held void for lack of standards in the statute; nor cases where the statute authorized adoption of rules "for the efficient conduct of the work and general administration of the department," etc. or similar phraseology. On the other hand, a comparably couched delegation of power was sustained as adequate in *Grenewicz* v. *Ligham, supra* (34 N. J. Super., at p. 9), citing *Jamouneau* v. *Harner,* 16 N. J. 500 (1954). *Cf. State* v. *Board of Chosen Freeholders of Bergen County* (Sup. Ct., decided June 29, 1962).

In the ebb and flow of the delegation doctrine down the years, both state and federal cases are to be found to sustain or destroy almost any type of legislative delegation of rule making authority to an administrative agency. But the modern and preferred approach is in favor of flexibility and liberality insofar as standards for delegation are concerned while exerting close judicial supervision over fairness of adjudicative procedures. See *Gellhorn and Byse, Administrative Law, Cases and Comments* (1954), p. 99, *et seq.* In 1 *Davis, Administrative Law* (1958), §2.15, p. 150, it is stated:

> "The direction of movement of the law of delegation is clear. In the federal courts, nothing but a congressional abdication or clear abuse is likely to be held an invalid delegation. One state court declared in 1956: 'The modern tendency of the courts is toward greater liberality in permitting grants of discretion to administrative officials in order to facilitate the administration of the laws as

> the complexity of governmental and economic conditions increases.' Too many courts remain unaware of this 'modern tendency.' "

And see *Yakus* v. *United States*, 321 U. S. 414 (1944) and *Lichter* v. *United States*, 334 U. S. 742 (1948), in the light of which, in the opinion of competent students, the famous decisions in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935) and *Schechter* v. *United States*, 295 U. S. 495 (1935), stressed by present plaintiffs, are apt to wither on the vine as authorities inimical to delegative flexibility. See *Gellhorn and Byse, op. cit., supra*, p. 114.

In *Ward* v. *Scott*, 11 N. J. 117, 123 (1952) the court said: "Nor are we restricted to the ascertainment of standards in express terms if they may be reasonably implied from the entire act." As similarly expressed in *Lane* v. *Holderman*, 23 N. J. 304, 316 (1957): "the context of the act and its imbedded objective may be considered in determining whether or not the administrator's discretion is constitutionally circumscribed." So, too, here. As an example, the provisions of the workmen's compensation act mandating conscientious protection by the Division of Workmen's Compensation of the specified rights of injured workers reasonably imply a standard and policy which may be administratively implemented by procedural regulations concerning reporting of accidents which are demonstrably servient to the more efficient execution by the agency of such statutory policy.

The peculiar significance of the factors of the continuousness of the administrative character of the agency involved and the character of the regulation as substantive or procedural was noted by the court in *Van Riper* v. *Traffic Tel. Workers' Fed. of N. J.*, 2 N. J. 335 (1949). It was stated there was greater need of specific standards in cases of delegation of power to *ad hoc* labor arbitration boards than "there would be in the case of a continuous

administrative body which might gather experience as it went along" (at p. 353); also, "standards of delegation are peculiarly required * * * where the legislature is enacting a new pattern of social conduct" (at p. 354).

We find the legislative delegation of rule-making power here in accord with constitutional principle.

Plaintiffs also attack the adequacy of the final factual findings and conclusions of the Commissioner. While they could serviceably have been more detailed in some respects, we deem them adequate for present purposes. Moreover, it cannot be said that specificity of factual findings is as imperative in respect of hearings attendant upon the administrative adoption of quasi-legislative rules of general application as where the adjudicatory function of the agency is involved. See our prior opinion in this matter (54 N. J. Super., at p. 266). This is particularly true where the administrative product consists of procedural rather than substantive rules. In any case, the fairness of approach of the Commissioner in this matter is manifested not only by his liberality in interpretation of our prior order concerning the scope of the proofs to be admitted on behalf of plaintiffs, but also by his receptivity to a number of criticisms advanced by plaintiffs as reflected in the regulations as finally promulgated at the conclusion of the hearings.

Plaintiffs candidly admit in their brief that "their resistance to a recasting of accident reporting sprung in part from a demonstrable conviction that the forms would be used to produce more claims and to edge up the claims already made." They submit a "Brandeis" style brief, much of which is an attempted demonstration that the act is being deliberately administered for the purpose of instigating claims by satisfied employees and of producing excessive and illegal settlements and awards in favor of injured workers; that New Jersey industry cannot afford

the burden of the cost of workmen's compensation as so administered and that the forms here involved have been devised with the objective of further improper aggrandizement of the allowances to workers at the expense of industry and insurance carriers. To the extent that this represents an attack upon the *bona fides* of the Department in adopting these regulations, we find the assault unjustified. The other representations advanced do not belong in a brief of legal argument on the *validity* of the regulations. They are appropriately to be addressed to the Legislature, the Executive, or the electorate.

More pertinently, plaintiffs also argue that their proofs before the Commissioner establish that the use by the various agencies in the Department of the accident report forms in the past has been so minimal as to suggest that there is no demonstrable bona fide purpose or intent, or reasonable necessity, to use the information to be provided by the new forms for the purported purposes (accident prevention, rehabilitation, etc.). Proofs purporting to show the comparative uselessness of any attempts at such uses were also adduced. In the light thereof, it is argued, the considerable additional expense and inconvenience which the revised reporting will cast upon the reporting companies impels the conclusion that the whole program is so arbitrary and unreasonably burdensome on employers and insurers as to justify judicial nullification.

We have read the proofs relative to the foregoing contentions with interest. However, we deem the argument substantially one involving policy considerations for resolutions by the administrator of the agency, not by the court, in the absence of a showing of arbitrariness or unreasonableness not here demonstrated. As to the use to be made of the forms, the present Commissioner avows an intent to have greater recourse to this information in the future than has been the case under his predecessors in the past.

We must accord his representations the presumption of good faith. As to the cost of compliance by plaintiffs, considering that systematic reporting of accidents has always been the practice in this State, we cannot find that the added expense of compliance with the new regulations is so excessive that, in the light of the *prima facie* showing of the reasonableness of the requirements and our satisfaction in all other respects with their legality, we would be warranted in holding them invalid on that ground.

II

We turn to the second basic objection of plaintiffs to the forms—the requirements as to furnishing of medical information and diagnoses, particularly to the injured worker. As originally proposed, new form WC-5 would have required the employer or insurance carrier to report to the Division *and* to the injured employee *detailed* medical diagnoses and x-ray findings. As a result of objections by employer and insurance representatives prior to the final promulgation of the forms by Commissioner Holderman, there was a modification permitting the information to be supplied the employee to be in *general* terms, both as to diagnoses and x-ray findings. During the hearings before Commissioner Male great stress was laid by plaintiffs' medical witnesses on the harmful psychological effect which direct receipt of raw medical information might have in many cases on injured workers. To meet this consideration, without sacrificing the aim of fair apprisal of the injured worker of the nature of his injury so that he might more intelligently decide what his claim was worth for settlement or award purposes, the regulation was modified upon final adoption after the hearings. Provision is made on the form for permitting the reporter to inform the employee that a physician of his choice may obtain medical information if the physician writes to the Division. As a

prerequisite, the employer's doctor must recommend in writing that the employee not receive the data.

Concerning the continued requirement that detailed x-ray findings and detailed medical diagnoses be filed with the Division, the Commissioner found as a fact that all plaintiffs "regularly receive such information in compensable cases" and that "this information is essential for the proper exercise of rehabilitation services and the conduct of the Direct Settlement Review Program in the Division of Workmen's Compensation." We find these conclusions supported by the proofs.

The relevance between the requirement that information of the type described should go to the Division and the injured employee and the proper administration of the workmen's compensation act is obvious. As a practical matter, medical treatment of industrial injuries is in the first instance provided most often by medical and nursing personnel engaged by the employer. The statute requires that the employer render medical treatment to the employee, R. S. 34:15-15, and the economic circumstances of the injured workman generally impel his accepting treatment by the "company doctor" even after first aid of the immediate condition produced by an accident. What the presently challenged rules provide is in the nature of discovery for the benefit of the worker of information generally highly material to the question of the extent of his injury and the degree of its permanence, if any, and thus to the fairness and adequacy of any award for or settlement of the claim. The information is peculiarly within the possession or control of the employer; the Division needs it in order efficiently and fairly to review or negotiate settlements; the workman (or his attorney) needs it to exercise sound judgment in relation thereto or in prosecution of a formally litigated claim.

As to the statutory authority of the Commissioner to require such information and the transmittal thereof to

the employee, everything stated in *I* of this opinion is here also pertinent. In addition, there is the buttressing statutory provision in R. S. 34:15-100, quoted above, that the employer or insurance carrier shall, when directed so to do, file with the workmen's compensation bureau copies of such medical certificates or reports which it may have on file. We do not regard the specific requirements of the regulations under review as violative of or inconsistent with this section, within the applicable interpretive principles, favorable to administrative regulation, discussed in *I, supra*. Rather do we regard the express statutory provision as indicative of a general legislative attitude in accord with the object of the regulations. Here, too, the fact that the requirement is of a procedural and remedial, rather than substantive character, conduces toward liberality in sustaining it.

As in the case of the objections to the filing by self-insured employers of form L&I-1, plaintiffs strongly attack the reasonableness of the requirement for furnishing medical information. Stress is laid on the cost and inconvenience thereof to the reporting employers and insurers as well as on the unwisdom of permitting employees to have such information. Our reactions to these contentions are the same as to the similar policy and expense pleas made by plaintiffs in respect of form L&I-1. We find no arbitrariness, but, on the contrary, a good deal of rational justification for this aspect of the challenged regulations. We recognize, as did the Commissioner, that there are counter-considerations, in terms of the welfare of injured workers, in permitting them to have raw medical diagnoses in certain types of ailments without the protective screen of the patient's own physician. However, this consideration does not apply to every kind of injury or ailment. Moreover, some amelioration of potential harm is provided by the last revision of the regulation. In the last analysis, however, the weighing of the policy considerations *pro* and *contra* is for the expert judgment of the administrator.

We cannot say that his conclusion in this instance is arbitrary or unreasonable.

Finding all of the regulations, so far as challenged herein, to be valid and free from the legal objections leveled against them by plaintiffs, we adjudicate them to be valid, lawful and subsisting in all respects and direct that the stay against their enforcement be vacated forthwith.

Opinion.

SUPREME COURT OF NEW JERSEY,

DOCKET NO. 3928.

ESSO STANDARD OIL COMPANY, *et al.*,
Plaintiffs,

vs.

CARL HOLDERMAN, Commissioner, Department of Labor and Industry, State of New Jersey,
Defendant.

NEW JERSEY MANUFACTURERS CASUALTY INSURANCE COMPANY, *et al.*,
Plaintiffs,

vs.

CARL HOLDERMAN, Commissioner, Department of Labor and Industry, State of New Jersey,
Defendant.

NEW JERSEY MANUFACTURERS CASUALTY INSURANCE COMPANY, *et al.*,
Plaintiffs,

vs.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,
Defendant.

Civil Action.
Opinion.

Argued February 18, 1963—Decided March 4, 1963.

Per Curiam. The judgment is affirmed for the reasons expressed in the opinion of Judge Conford in the Appellate Division.

Judgment.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

A-60-58; A-68-58; A-995-59

ESSO STANDARD OIL COMPANY, *et al.*,
Plaintiffs,

vs.

CARL HOLDERMAN, Commissioner, Department of Labor and Industry, State of New Jersey, Defendant.

NEW JERSEY MANUFACTURERS CASUALTY INSURANCE COMPANY, *et al.*,
Plaintiffs,

vs.

CARL HOLDERMAN, Commissioner, Department of Labor and Industry, State of New Jersey, Defendant.

NEW JERSEY MANUFACTURERS CASUALTY INSURANCE COMPANY, *et al.*,
Plaintiffs,

vs.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey, Defendant.

Civil Action.
Judgment.

This matter having been opened to the Court by Theodore I. Botter, First Assistant Attorney General, for Arthur J. Sills, Attorney General of New Jersey, representing the Commissioner of Labor and Industry of the State of New Jersey, for the entry of judgment in accord-

ance with the written opinion of this Court, and the Court in said written opinion having determined that the regulations heretofore promulgated by Carl Holderman, Commissioner, Department of Labor and Industry, as modified after the hearings on remand by his successor in office, Commissioner Raymond F. Male are valid, lawful and subsisting in all respects, and for good cause shown;

It Is on this 24th day of September, 1962,

Ordered that any stay heretofore entered herein against the enforcement of the regulations shall be and the said stay is hereby vacated; and it is further

Ordered that the said regulations as finally promulgated by the Commissioner of Labor and Industry are and they are hereby adjudicated to be valid, lawful and subsisting in all respects and accordingly judgment is hereby entered in favor of defendant and against plaintiffs without costs.

/s/ Milton B. Conford, S. J. A. D.

We hereby consent to the foregoing order solely as to the form thereof, but plaintiffs reserve the right to apply for a further stay of the regulations in question.

Wharton, Stewart & Davis

By: John W. Fritz
A Member of the Firm

New Jersey Manufacturers Casualty Insurance Company and Mitchell-Bissell Company

By: Edward B. Meredith

Arthur J. Sills
Attorney General of New Jersey

By: Theodore I. Botter
First Assistant Attorney General

Mandate on Affirmance.

SUPREME COURT OF NEW JERSEY,

ESSO STANDARD OIL COMPANY, *et al.*,
Plaintiffs,
vs.
CARL HOLDERMAN, Commissioner, Department of Labor and Industry, State of New Jersey,
Defendant.

NEW JERSEY MANUFACTURERS CASUALTY INSURANCE COMPANY, *et al.*,
Plaintiffs,
vs.
CARL HOLDERMAN, Commissioner, Department of Labor and Industry, State of New Jersey,
Defendant.

NEW JERSEY MANUFACTURERS CASUALTY INSURANCE COMPANY, *et al.*,
Plaintiffs,
vs.
RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,
Defendant.

Appeal Docket No. 3928.

Civil Action. On Appeal.

Mandate on Affirmance.

This cause having been duly argued before this Court by Mr. John W. Fritz and Mr. Edward B. Meredith, counsel for the appellants and Mr. Theodore I. Botter, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court—Appellate Division is affirmed with costs; and it is further ordered that this mandate

shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court—Appellate Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the fourth day of March, 1963.

/s/ JOHN H. GILDEA
Clerk

.....
Clerk of the Supreme Court

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JOHN H. GILDEA
Clerk

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Order Denying Petition for Rehearing.

SUPERIOR COURT OF NEW JERSEY

ESSO STANDARD OIL COMPANY, *et al.*, Plaintiffs-Appellants, *vs.* CARL HOLDERMAN, Commissioner, Defendant-Respondent.	Docket No. 3928 On petition for rehearing.

This matter having been duly presented to the Court, and no justice who voted with the majority having moved a reconsideration, it is Ordered that the petition for rehearing is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this twenty-fifth day of March 1963.

/s/ JOHN H. GILDEA
Clerk

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John H. Gildea
Clerk

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 326

HUMBLE OIL & REFINING COMPANY, *et al.*,

Appellants,

vs.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,

Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS WITH BRIEF AND APPENDIX IN SUPPORT THEREOF

ARTHUR J. SILLS,
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Of Counsel:

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Law Assistant.

Dated: August 30, 1963.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 326

HUMBLE OIL REFINING COMPANY, *et als.*,

Appellants.

v.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,

Appellee.

On Appeal from the Supreme Court of New Jersey

Motion to Dismiss

Pursuant to Rule 16(1)(b) of this Court, appellee, by the Attorney General of New Jersey, moves to dismiss on the grounds that this appeal does not present a substantial Federal question and the judgment below rests upon adequate non-Federal grounds.

Opinions Below

The *per curiam* opinion of the Supreme Court of New Jersey, affirming for the reasons expressed in the opinion of Judge Conford in the Appellate Division, is reported at 39 N. J. 355, 188 A. 2d 599 (1963). The opinion of the Appellate Division, Superior Court of New Jersey, is reported at 75 N. J. Super. 455, 183 A. 2d 454 (App. Div. 1962). Both opinions are contained in the appendix to appellants' jurisdictional statement (referred to herein as "App."). An earlier opinion of the Appellate Division, permitting the taking of testimony before an administrative officer, is reported at 54 N. J. Super. 260, 148 A. 2d 728 (App. Div. 1959).

Jurisdiction

The purported jurisdictional basis for this appeal is 28 U. S. C. § 1257(2) in that the court below declared state regulations valid against appellants' contention that the regulations are repugnant to the Federal Constitution.

BRIEF IN SUPPORT OF MOTION

Questions Presented

1. Whether a substantial Federal question is raised by appellants' contention that New Jersey statutes contain inadequate standards to guide the Commissioner of Labor and Industry in his promulgation of regulations dealing with reports of industrial accidents and occupational diseases.

2. Whether a substantial Federal question is raised by the failure of the court below to determine what penalty might be invoked against appellants if they fail to comply with the State regulations in question, where none of appellants have been charged as yet with any violation.

3. Whether the judgment below rests upon adequate non-Federal grounds, namely, (a) the regulations were promulgated in accordance with State legislative authority delegated to the Commissioner of Labor and Industry and (b) the taking of evidence for use in the declaratory judgment action was limited in scope in accordance with New Jersey Rules of Court.

Statement of the Case

This is an appeal from a judgment of the highest court of New Jersey which upheld certain regulations of the Commissioner of Labor and Industry of the State of New Jersey (hereinafter referred to as "Commissioner") promulgated on July 25, 1958, to become effective October 1, 1958. The regulations were adopted after considerable study and conferences with representatives of industry, employer and insurance groups. This history is traced in

the opinion of the Appellate Division, App. 3a to 4a. The regulations govern reports of industrial accidents and occupational diseases filed by employers and insurance companies. The principal changes in New Jersey law brought about by the regulations were (1) the requirement that self-insured employers file early initial reports of certain industrial accidents in addition to reports previously required of them by statute, and (2) the requirement that both insured and self-insured employers regularly furnish certain medical information and diagnoses to the Division of Workmen's Compensation and to injured employees, or to an employee's own physician if the employer's doctor recommends that the employee should not receive such medical information.

The changes made by the regulations will be described more carefully. By statute, R.S. 34:15-96 (App. 4a to 5a) *insured* employers must file a first report "upon the happening of any accident or the occurrence of any compensable occupational disease." However, *self-insured* employers have been required by statute, R.S. 34:15-97 (App. 5a to 6a) to file a first report immediately upon learning of accidents "causing any permanent injury" and of accidents or compensable occupational disease causing a disability extending beyond the "waiting period." The "waiting period" is defined by R.S. 34:15-14 as a period of seven days of disability following an accident, whether the days are consecutive or not. Thus, since 1924, when said statutory provisions were enacted, insured employers filed initial reports of all accidents immediately after the accidents, but self-insured employers were required to file initial reports immediately for only those accidents causing permanent disability and were not required to report other accidents or occupational diseases unless the employee was disabled for more than seven days.

Under the challenged regulations adopted by the Commissioner of Labor and Industry, both insured and self-insured employers are now required to file a first report no later than the start of the second work day after certain accidental injuries. These are injuries which cause a loss of time from regular duties beyond the working day or shift upon which the accident occurred, or which require medical treatment beyond ordinary first-aid. The report is also required on the occurrence of an occupational disease, whether or not time is lost. In case of a fatal or serious injury, an injury that requires hospitalization, the report must be made immediately. This report, known as Form L&I-1, is mailed to the Department of Labor and Industry, Bureau of Engineering and Safety.

As for furnishing medical information, the regulations require that the final report of accident contain detailed X-ray findings and a detailed diagnosis of the nature and extent of injuries. This information is omitted from the employee's copy of the final report and the employee is advised that a physician of the employee's choice may obtain this information upon request. The final report also requires a statement of "general X-ray findings" and a "general diagnosis". However, this information need not be furnished to the employee if the treating physician recommends that the employee should not have this information, "because of the adverse effect that knowledge of the answers may have on the employee." A copy of Form L&I-1 is included in the appendix annexed hereto.

R.S. 34:15-100 has been in effect since 1924 and, therefore, without the new regulations, medical information was required to be produced in the following terms:

> "As a part of the necessary medical service required by the compensation law, the employer or insurance carrier shall, when directed so to do, file with the work-

men's compensation bureau* copies of such medical certificates or reports as it may have on file." R.S. 34:15-100.

The action below was commenced by appellants** by the filing of a petition for declaratory judgment in the Appellate Division of the Superior Court of New Jersey on October 3, 1958.*** On October 3, 1958 appellants filed an amended petition for declaratory judgment, which is set forth in the appendix annexed hereto. Appellants are self-insurers, that is, self-insured employers, corporations engaged in business in New Jersey who carry their own workmen's compensation liability insurance. Paragraph 1 of their amended petition for declaratory judgment recites that appellants "are all subject to the applicable provi-

---

* Since the reorganization of the Executive Branch of Government in New Jersey following the adoption of the 1947 Constitution of New Jersey, the Workmen's Compensation Bureau has been known as the Division of Workmen's Compensation, in the Department of Labor and Industry. N.J.S.A. 34:1A-5.

** The following self-insured corporations were parties-plaintiff and appellants in the proceedings below in the New Jersey appellate courts but apparently have dropped out of the case and have not joined in the appeal to this Court:

(1) Johns-Manville Products Corporation, (2) General Motors Corporation, (3) Samuel Hird & Sons, Inc., (4) National Biscuit Corporation, (5) Sears, Roebuck and Co., (6) The International Nickel Company, Inc., (7) Ford Motor Co.

*** Under The Revision of the Rules Governing the Courts of the State of New Jersey, the procedure for reviewing the validity of any administrative rule promulgated by a State administrative agency is by petition for a declaratory judgment addressed to the Appellate Division. R.R. 4:88-10. The procedure applicable to such actions conforms with the procedure governing appeals from the trial divisions to the Appellate Division of the Superior Court of New Jersey. R.R. 4:88-10.

sions of Title 34 of the New Jersey statutes, entitled Labor and Workmen's Compensation, R.S. 34:1-1, *et seq.*"*

The detailed allegations of appellants' amended petition for declaratory judgment attacked the regulations principally because they were said to conflict with the provisions of various New Jersey statutes. The assertions of unconstitutionality were expressed in vague, general terms, in paragraphs 12 and 13, as follows:

> "12. Plaintiffs further allege that said amendments are arbitrary, unreasonable, capricious, discriminatory and oppressive and are therefore illegal and void and contrary to the provisions of the constitutions of the United States and of the State of New Jersey.
>
> "13. Plaintiffs further allege that to the extent Title 34 of the Revised Statutes of the State of New Jersey permits the valid promulgation of said amendments, said statutes are contrary to the provisions of the constitutions of the United States and of the State of New Jersey."

---

* Separate petitions for declaratory judgment were also filed, on October 9, 1958, by New Jersey Manufacturers Casualty Insurance Company, a company engaged in the business of writing workmen's compensation insurance in the State of New Jersey and, on October 23, 1958, by Mitchell-Bissell Company, a company that is engaged in the manufacturing business in New Jersey and is an insured employer subject to the Labor and Workmen's Compensation laws of the State of New Jersey. The said insurance company and insured employer complained primarily of the regulations insofar as they required the submission of medical information and diagnoses to the Division of Workmen's Compensation and to injured employees. The regulations requiring the additional early report of accidents of self-insured employers did not apply to these two plaintiffs, since insured employers had always filed an early report of accident prior to the new regulations. No appeal has been taken to this Court by the said New Jersey Manufacturers Casualty Insurance Company or Mitchell-Bissell Company.

Appellants sought and obtained a stay of the regulations pending determination of their action. 54 N. J. Super. at 265.

Upon application of appellants for leave to supplement the record with additional evidence on the issues in the case pursuant to R.R. 4:88-11, the Appellate Division ordered that testimony be taken before the agency head or his designee on *specific* subjects relating to the legality and reasonableness of the regulations. 54 N. J. Super. at 272.

Hearings were held between December 15, 1959 and February 26, 1960, and then the matter was resubmitted to the Appellate Division for consideration on the merits. Amazingly, the printed record on the appeal following the hearing comprised approximately 3,000 pages. However, the principal contentions of appellants remained the same and did not depend significantly upon the evidence adduced at the hearings. Appellants' principal contentions before and after the hearings were that the regulations were in conflict with existing statutes governing reports of self-insured employers and that the Commissioner exceeded his delegated authority in the promulgation of the regulations. *See*: App. 14a, where the Appellate Division said:

> "Plaintiffs' major reliance for their thesis of illegality of the timing of the L&I-1 form in respect of self-insured employers, as noted, is that the Accident Reporting Act constitutes a specific regulation on the subject by the Legislature, preempting the field to the exclusion of jurisdiction thereof by the Commissioner through rules and regulations."

The requirement that medical information be furnished was attacked as beyond the statutory authority of the Commissioner and as unreasonable, burdensome and inconvenient to the reporting employers as well as harmful to the

interests of the injured employees. As to these contentions the Appellate Division held that the Commissioner did have the statutory authority to require the submission of such medical data and further said, "We find no arbitrariness, but, on the contrary, a good deal of rational justification for this aspect of the challenged regulations." (App. 22a, 23a.)

The Appellate Division upheld the regulations in all respects and appellants appealed to the Supreme Court of New Jersey. Appellee herein moved to dismiss said appeal on the grounds that a substantial constitutional question was not raised and, therefore, under New Jersey Rules of Court an appeal as of right could not be taken to the New Jersey Supreme Court. The Supreme Court of New Jersey reserved decision on the motion to dismiss. After oral argument on the merits of the appeal, the New Jersey Supreme Court affirmed *per curiam* on the opinion below. Appellants filed a petition for rehearing with the Supreme Court of New Jersey, but this petition was denied and the order staying the effectiveness of the regulations was also dissolved by the Court.

It is interesting to note the absence of a Federal question in appellants' description of the principal constitutional problems set out in their brief before the Supreme Court of New Jersey. At pages 19 and 20 of appellants' brief in that Court, appellants contended:

> "The prime constitutional problem here at issue can concededly be resolved by answers to the following questions:
>
> 1. Did the legislature intend to vest authority in the Commissioner of Labor and Industry to require accident reports from all employers regardless of insurance status and from all insurance carriers, in all

cases where time was lost beyond the shift or where medical treatment beyond ordinary first aid was required or in the case of any occupational disease?

2. If this intent accords with constitutional principles, is it accomplished by legally adequate standards to guide and limit the administrator?

3. Did the administrator confine his activity to the delegated power and within these standards?

If the answer to any one of the foregoing queries is in the negative, the defendant's action is constitutionally offensive."

Our present motion to dismiss is based upon the contention that there are no substantial Federal constitutional issues presented by this appeal and that the judgment below is adequately based upon independent non-Federal grounds.

Statutes and Regulations Involved

This action challenges the validity of regulations promulgated by the Commissioner of Labor and Industry dealing with the reporting of industrial accidents and occupational diseases. The statutes relied upon by the New Jersey courts in upholding the validity of the regulations are:

R.S. 34:1-20, which provides that the Commissioner may make rules and regulations as he deems necessary to enforce the provisions of Title 34, dealing with Labor and Workmen's Compensation laws.

N.J.S.A. 34:1A-3, which, after the reorganization of the Executive Branch of the New Jersey Government following the adoption of the 1947 Constitution of New Jersey, confirms the power in the Commissioner, as head of the Department of Labor and Industry, to adopt regulations

"as may be authorized by law" and as may be necessary "for the efficient conduct of the work and general administration of the department * * *."

R.S. 34:1-9, which authorizes the Commissioner to utilize one bureau to assist in the work of another bureau in his department so as "to facilitate the economical and efficient performance of its work * * *."

R.S. 34:1-19, which requires the Commissioner to report annually to the Governor on "the work of the department."

R.S. 34:15-50, which deals with the responsibility of the Division of Workmen's Compensation to supervise and "endeavor to bring about a settlement" of pending workmen's compensation claims.

R.S. 34:15-15, which requires an employer to furnish medical treatment for an injured workman and permits an employee to secure such treatment if the employer refuses or neglects to furnish medical care.

R.S. 34:15-100, which requires that, "As part of the necessary medical service required by the compensation law, the employer or insurance carrier shall, when directed so to do, file with the workmen's compensation bureau copies of such medical certificates or reports as it may have on file."

ARGUMENT

POINT I

No substantial Federal question is raised by this appeal and the judgment below rests upon adequate non-Federal grounds.

A. A Federal question is not presented by appellants' contention that the regulations of the State Commissioner were promulgated without a valid delegation of legislative authority by a state officer acting under state statutes lacking in adequate standards.

Appellants claim that a substantial Federal constitutional question is raised by their contention that the New Jersey statutes did not contain adequate standards to govern the promulgation of the regulations in question. To support this contention appellants cite *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935) and *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495 (1935). But both of these cases dealt with the delegation of legislative power on the *Federal* level. In neither case were state action or state statutes involved.

In the *Panama Refining* case, *supra*, the court dealt with an executive order of the President of the United States prohibiting the transportation of petroleum in interstate commerce in excess of amounts permitted by state law or regulation to be produced or withdrawn from storage. The executive order was based upon the National Industrial Recovery Act of 1933. This Court held that said Act did not lay down a legislative policy and did not establish adequate standards to control executive action. The court held that this was in violation of the Federal Constitution insofar as it vests the legislative power of the United States in Congress. The court held that while Congress could not

transfer its duties to or authorize the exercise of its powers by an administrative officer, the fulfillment of a legislative program could be left to an administrative officer, with the power to promulgate detailed regulations, providing Congress adequately expresses its policy and standards for such action. A similar decision was reached in the *Schechter Poultry* case, where the court held the National Industrial Recovery Act unconstitutional and set aside criminal convictions for violation of the Live Poultry Code. The court held that the Code, establishing standards of fair competition for the poultry industry, was enacted pursuant to an improper delegation of legislative authority. Again, Congressional legislative authority was involved and the division of Federal governmental authority was the sole issue. A state form of government and the power of a state legislature to delegate its authority within the scope of a state constitution was not involved.

This court has repeatedly held that the delegation of legislative power to state officers and agencies is not a Federal question. *Welsh* v. *Swasey*, 214 U. S. 91 (1909); *Erie R.R. Co.* v. *Bd. of Public Utilities Commissioners of New Jersey*, 254 U. S. 394 (1921); *Ohio* v. *Akron Metropolitan Park District*, 281 U. S. 74 (1930); *Neblett* v. *Carpenter*, 305 U. S. 297 (1938); *O'Neill* v. *Leamer*, 239 U. S. 244 (1915).

The *Welsh* case, *supra*, concerned legislation enacted in Massachusetts regulating the height of buildings in the City of Boston. A commission was given authority to prescribe the height of buildings between 80 and 100 feet in one of the districts of Boston and to impose conditions concerning the erection of the buildings. No significant standards were provided to guide the action of the commission. Although it did not appear that appellant "makes the objection of illegality arising from an alleged delegation of legislative power to the commissions provided for by the statutes," this Court said:

> "At all events, it does not raise a Federal question. The state court holds that kind of legislation to be valid under the state constitution and this court will follow its determination upon that question." 214 U. S. at 104.

Ohio v. *Akron Metropolitan Park District*, *supra*, involved a statute concerning the organization and powers of park district boards. The Park District Act of Ohio was attacked as invalid and violative of the due process and equal protection clauses of the 14th Amendment of the Federal Constitution. The Act provided for the establishment of a park district by order of a probate judge of the county. The probate judge was empowered to appoint three commissioners to constitute the Board of Park Commissioners, a public agency. The Board was given condemnation power, the power of levying assessments and taxes and the power to establish rules and regulations for the operation of the parks, the violation of which constituted a misdemeanor. Taxpayers complained that the state statutory provisions involved an unconstitutional delegation of legislative power to the probate court and to the nonelective park commissioners. 281 U. S. at 79. This Court held that these contentions did not raise any substantial Federal question saying:

> "We do not consider it necessary to consider at length this objection, or the other points sought to be made against the statute under the Fourteenth Amendment, as, in view of the repeated decisions of this Court, we do not find any substantial Federal question presented." 281 U. S. at 79.

Neblett v. *Carpenter*, *supra*, involved a challenge of the powers given to the California Insurance Commissioner to rehabilitate an insurance company under the Insurance

Code of California. It appears that appellants challenged the delegation to the Commissioner of legislative functions and the scope of his acts within that delegation. This Court noted that the contentions were rejected by the California court and that this Court was without jurisdiction to review the state court's decision on these questions. 305 U. S. at 302. This Court said:

> "It is argued that the Code unconstitutionally delegates legislative functions to the Commissioner, and that the Supreme Court erred in not so holding. This, again, is a question of state law the decision of which by the State's highest court is binding upon us."

In the *Erie Railroad* case, *supra*, the railroad complained of an order of the New Jersey Board of Public Utility Commissioners requiring the railroad to eliminate certain railroad crossings at street grade in the City of Paterson. The statute gave the Board the power to enter a grade-crossing elimination order if the crossing "is dangerous". The railroad argued that the Board had exceeded its powers. Of this the court said:

> "Some argument is based upon a discretion supposed to be left to the Board by the statute, which reads that when it appears to the Board that the crossing is dangerous it may order, &c. The State Courts seem to regard the words as imposing a positive duty, but upon either construction we perceive no infraction of the company's constitutional rights. If the words are imperative the reasons that we have given apply. If they leave a discretion it is subject to review by the Courts, and this Court has no concern with the question how far legislative or *quasi*-legislative powers may be delegated to a commission or board." 254 U. S. at 412-13.

See also: *O'Neill* v. *Leamer, supra,* where this court held in 239 U. S. at 247-8 that:

> "The propriety of the delegation of authority to the District Court in the matter of the formation of the drainage district is a state question."

As noted in the Appellate Division decision (at App. 16a), the regulations under review consist "merely of procedural directives for the filing of informational reports." The court held the statutory delegation of rule-making power contained sufficient standards to guide the Commissioner's action, whether these standards be expressed or implied. The court held (at App. 18a) that the statutory provisions requiring the Division of Workmen's Compensation to protect rights of injured workers "reasonably imply a standard and policy which may be administratively implemented by procedural regulations concerning reporting of accidents * * *."

Although Federal decisions do not control the interpretation of the delegation of state legislative power, it is respectfully submitted that the decision in this case is in conformity with more recent decisions of the United States Supreme Court. *See*: *Yakus* v. *United States,* 321 U. S. 414 (1944) and *Lichter* v. *United States,* 334 U. S. 742 (1948). We note the many functions of New Jersey's Commissioner of Labor and Industry for which early reports of accidents would be useful:

> 1. The inspection of regulated establishments. R.S. 34:1-15;
>
> 2. The enforcement of laws and regulations and the investigation and study of any special problems connected with the labor and employment of women and children. R.S. 34:1-27;

3. The collection of statistical details relating to labor in the State with particular regard to the conditions of the laboring classes, which records and statistics are collected for two prime purposes: first, the permanent establishment of productive industry upon a prosperous basis both to the employer and employed; and, second, the submission of an annual report to the Legislature covering such information as may be necessary to show the true condition of industry in the State of New Jersey. R.S. 34:1-49 and R.S. 34:1-50;

4. Assisting migrant laborers in securing employment, suitable working conditions and housing. R.S. 34:1-66;

5. The regulation of potentially hazardous working conditions as are created by openings in the floor, R.S. 34:2-31; improper ventilation, R.S. 34:2-32; the presence of inflammable liquids, R.S. 34:3A-1 to 34:3A-3; and passenger elevators, R.S. 34:4-1 to 34:4-9;

6. The enforcement of safety and comfort provisions providing for the protection and betterment of the condition of workers in factories, mines and other workshops. R.S. 34:6-1, *et seq.* (The detailed protections afforded here are extremely numerous. They illustrate the great scope of activity and responsibilities of the Commissioner. Typical among these is the mine safety section which gives to the Commissioner, acting through the Bureau of Engineering and Safety, the power to "inspect, investigate, inquire and examine into the operation, workings, methods, safety devices and appliances, machinery, sanitation, ventilation, means of ingress and egress, means taken to protect the lives and insure the safety and health of miners,

together with the causes of accidents, injuries and fatalities and means taken to comply with the law. * * *" R.S. 34:6-98.3(c)); and,

7. The examination of steam boilers. R.S. 34:7-17.

As noted in the Appellate Division decision, the Commissioner is empowered to utilize any bureau in his department to assist the work of another bureau. R.S. 34:1-9. Therefore, having one accident report that could be used by many bureaus will reasonably facilitate the performance of the Commissioner's varied responsibilities under New Jersey's laws dealing with labor, industry and workmen's compensation.

B. Where a violation of the regulations has not been charged as yet, nor any penalty imposed, the failure of the court below to determine what penalty, if any, may be applied if appellants do not comply with the regulations does not present a Federal question for this Court.

Appellants' Petition for Declaratory Judgment (set forth in the Appendix hereto) did not raise the issue concerning the uncertainty of a penalty. Appellants contend in their jurisdictional statement, "The constitutional problem thus engendered was specifically raised in the Appellate Division brief," citing "Plaintiffs' Appellate Division Brief, p. 125 *et seq.*" An examination of appellants' brief in the Appellate Division does not disclose that the portion of their brief around page 125 presents the argument that the absence or uncertainty of the penalty is a violation of due process of law protected by the Federal Constitution. The argument contained in the Appellate Division brief related to the delegation of legislative power without adequate standards. At page 121 of appellants' brief in the Appellate Division *Schechter Poultry Corp.* and *Panama Refining Co.* cases, *supra*, are cited. At page

123 appellants there said, "Such rationalization is a flagrant flaunting of the constitutional limitation of the separation of powers. *Harriman* v. *I.C.C., supra.*" The argument continues on page 124, but takes a slightly different course at page 125 where *Connally* v. *General Construction Company*, 269 U. S. 385 (1926) is cited for the proposition that, "A statute which either forbids or requires *the doing of an act* in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (Emphasis added.) The strongest presentation by appellants of their argument based upon the uncertainty of a penalty is at page 127 of its Appellate Division brief, as follows:

> "Quite obviously, the absence of specific grants of authority and the absence of specific standards in terms of which any such authority may find exercise has, as its inevitable result, non-specific and unknowable penalties as the only device of enforcement. Where, as here, the penalty is unknown and unknowable, the regulation is either unenforceable or invalid. See *Eaton* v. *United States, supra*; *Harriman* v. *I.C.C., supra.*"

Appellants contend (Jurisdictional Statement, p. 14) that in their brief before the Supreme Court of New Jersey at page 73 thereof they reiterated the "constitutional problem" raised by the uncertainty of a penalty. There, again, we see that appellants' argument centered primarily on the absence of adequate standards to guide the exercise of delegated authority. The argument again veers slightly to incorporate the rule that *conduct* must be declared unlawful with specific certainty before a person can be subjected to penalties for such conduct. But the argument returns to appellants' basic argument about standards in

the delegation of legislative authority, urging that the standards should not be found by implication. This argument is contained in Point II of appellants' brief before the New Jersey Supreme Court entitled: "Any purportedly proper delegation of authority or of the power the Commissioner asserts is void for lack of proper standards." The argument concludes at page 74 of that brief as follows:

> "This practical vice is unavoidable without the constitutional safeguard of adequate and ascertainable standards. The alchemy of implication is neither substitute nor safeguard.
>
> "*Parenthetically,* and apropos of standards, it would seem that the absence of specific standards in terms of which any such authority may find exercise has, as its inevitable result, non-specific and unknowable penalties as the only device of enforcement. Where, as here, the penalty is unknown and unknowable, the regulation is either unenforceable or invalid. See *United States* v. *Eaton,* 144 U. S. 677, 12 Sup. Ct. 764, 36 L. Ed. 591 (1892); *Harriman* v. *I.C.C.,* 211 U. S. 407, 29 Sup. Ct. 115, 53 L. Ed. 253 (1908). (Emphasis added.)
>
> " 'The modern tendency toward flexibility and liberality' must not be allowed to sanction the substitution of convenience for constitutionality. Plaintiffs look to the Court for protection."

For the first time in the proceedings below, in appellants' petition for rehearing before the Supreme Court of New Jersey appellants sought to advise that Court that its failure "to determine the issue with respect to penalty for noncompliance aggravates the inherent due process question." There appellants argued that the want of a specific penalty is a violation of due process and, "For this

Court to ignore it is for this Court to contravene the Federal Fourteenth Amendment of the Constitution of the United States." No cases were cited by appellants to support this contention. As noted above, rehearing was denied by the Supreme Court of New Jersey, without opinion.

The fact is that none of appellants have been accused of violating the regulations and no attempt has been made to impose a penalty on any of appellants. Under New Jersey law, appellants cannot prematurely raise the issue of penalties which have not been but which may be imposed for future violations of a State statute. See: *State* v. *Montelcone*, 36 N. J. 93, 100, 175 A. 2d 207, 211 (1961), which was an appeal from a conviction for violating New Jersey's Sunday Closing Law. There the Court said:

> "Defendants refer in their argument not only to the penalties particularized in N.J.S. 2A:171-5.8 but also to the provision of N.J.S. 2A:171-5.9 that 'upon any 4 convictions for violations of this act, the premises in or upon which the violation occurred shall be deemed a nuisance.'
>
> "As far as the record discloses, the instant convictions were for first offenses. The defendants, therefore, may not be held to invoke the constitutional protections against cruel and unusual punishment at this time merely by claiming that penalties which might be imposed upon them for subsequent violations, or penalties which might be imposed upon others not here involved could violate constitutional provisions."

Assuming that this issue was properly raised below, it should be presumed that the court below did not deal with the issue because it was premature under State law. Where Federal and non-Federal questions are properly raised in the State court and no opinion is delivered by the highest

State court in rendering its judgment, this Court will ordinarily presume that the decision is based upon an adequate non-Federal ground raised in the record below.* *Adams* v. *Russell*, 229 U. S. 353, 358 (1913); *Stembridge* v. *Georgia*, 343 U. S. 541, 547 (1952). In the latter case, the Court said,

> "Where the highest court of the State delivers no opinion and it appears that the judgment *might* have rested on a nonfederal ground, this Court will not take jurisdiction to review the judgment."

In any case, no Federal question is presented by appellants' "penalty argument." The rule in New Jersey that penalty arguments will not be prematurely entertained before the imposition of a penalty is also the rule of this Court. See: *Communist Party of United States* v. *Subversive Activities Control Bd.*, 367 U. S. 1, 104 (1961) and *United States* v. *Harriss*, 347 U. S. 612, 626-27 (1954). In the *Communist Party* case, *supra*, the court said:

> "As to the penalties for failure to register * * * which the Party attacks as exorbitant and oppressive,

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* In our supplemental brief before the Appellate Division, which was also before the Supreme Court of New Jersey, we contended that:

> "Whether any penalty can be imposed for the failure to file such a report and what penalty it is cannot determine the validity of the regulation in question. That is a problem for an enforcement suit that may be brought at a later time. The obligation to file the reports would exist regardless of the method in which it can be enforced. It may be that the method of enforcement would be a civil action for an injunction."

We further contended that the doubt that may exist as to the penalty for violation of the regulations may be cured by a supplemental regulation of the Commissioner, if necessary.

these are not now before us. They have not yet been imposed on the Party and may never be."

In the *Harriss* case, *supra*, it was contended that the penalty provisions included a prohibition from attempting to influence the passage of legislation for a period of three years and that such provision violated the constitutional guarantees of freedom of speech and the right to petition the Government. Again, the Court held that it was unnecessary to pass on the contentions since the penalty which was feared had not yet been applied to the appellees in that case and might not be if appellees were found innocent of the charges against them. The court here should not assume that appellants will violate the regulations.

In *U. S.* v. *Wurzbach*, 280 U. S. 396, 399 (1930) it was contended by a defendant indicted under the Federal Corrupt Practices Act that, "It is said to be uncertain which of several sections imposes the penalty and therefore uncertain what the punishment is." The Court answered this contention by saying, "That question can be raised when the punishment is to be applied."

It may also be presumed that the State's highest court refused to pass upon the penalty contention of appellants because that contention was not raised in accordance with State procedural rules. As noted above, the first time appellants argued that their Federal constitutional rights were jeopardized by the uncertainty of the penalty was in their petition for rehearing. The New Jersey Supreme Court denied their petition for rehearing without opinion. Under R.R. 1:9-4, such a petition is addressed to the discretion of the Court and will not be granted unless a justice who concurred in the judgment or decision moves it and a majority of the Court so determines. Under New Jersey law an appellate court is not bound to consider questions not raised below, even though they are constitu-

tional questions. *Roberts Electric, Inc.* v. *Foundations & Excavations, Inc.*, 5 N. J. 426, 429, 432, 75 A. 2d 858 (1950), where the court dismissed the appeal, "For want of a constitutional question properly raised * * *." See also, *Lettieri* v. *State Board of Medical Examiners*, 24 N. J. 199, 206-207, 131 A. 2d 518 (1957); and see R.R. 1:7-1(c) which requires that if the statement of questions involved includes any question not presented to the court below, "this fact shall be noted". Said Rule of Court provides: "The foregoing requirements are to be considered in the highest degree mandatory, admitting of no exception; ordinarily no point will be considered which is not set forth in or necessarily suggested by the statement of questions involved." In their briefs filed with the Appellate Division and the Supreme Court of New Jersey appellants' statement of questions involved did not raise this so-called "doubtful penalty" issue.

Appellants' petition for rehearing failed to comply with R.R. 1:7-1(c) in that it failed to indicate that appellants did not raise in the court below the argument presented in Point II of said petition, namely, that a Federal question was raised by the uncertainty of the penalty to be imposed for non-compliance with the regulations. The New Jersey Supreme Court's denial of a rehearing was therefore justified on the basis of this State procedural rule alone. In the *Stembridge* case, *supra*, this Court refused to consider an appeal from a judgment of the Supreme Court of Georgia which had failed to pass upon a Federal constitutional question "raised for the first time on the motion for rehearing in the Court of Appeals (of Georgia)." 343 U. S. at 547. This Court found that a procedural rule of the Georgia court required that constitutional questions must first be raised in the trial court and held that, "At this stage the Supreme Court of Georgia could have denied certiorari on adequate State grounds." This Court, there-

fore, declined to take jurisdiction and dismissed the case, saying that the petition for certiorari had been improvidently granted and that this Court is "without jurisdiction when a question of the existence of an adequate State ground is debatable." It is noted that in *Stembridge, supra*, no opinion was issued by the Georgia Court of Appeals in denying the motion for a rehearing, and the Supreme Court of Georgia thereafter denied certiorari without opinion.

C. The contentions of appellants regarding the hearing before the Commissioner and the use of the forms do not raise substantial Federal questions.

Appellants complain that in the administrative hearing the Commissioner refused to allow appellants to call certain subordinate employees in his department to refute testimony given by other members of the department.

As noted above, New Jersey court rules fix the procedure for an action brought directly in the Appellate Division to review a regulation of a State administrative agency. R.R. 4:88-10 and 11. R.R. 4:88-10 requires the agency to transmit to the Appellate Division a certified copy of the record of the proceedings resulting in the promulgation of the regulation being reviewed. Additional evidence may be submitted with leave of the Court pursuant to R.R. 4:88-11.

In the case at hand the Appellate Division did permit the taking of testimony to supplement the record, but limited the testimony to specific subjects. The Appellate Division permitted appellants to offer proofs solely as to:

> "(1) practical interpretation of prior rules on accident reporting by petitioners (practical interpretation through departmental practices will be afforded *not by testimony but by answers to interrogatories* or by stipulation); (2) the lack of necessity for, burdensome

> nature, and irrelevance to statutory purposes of information sought by proposed reports (departmental knowledge and data relevant to this will be afforded *not by testimony but by answers to interrogatories* or by stipulation); (3) manner of reporting by assureds under policy provisions; (4) practical difficulties and burdens of compliance of employers in various situations; (5) cost and inability of personnel to answer particular questions designated in forms." (Emphasis added) 54 N. J. Super. at 272.

Hearings were held on approximately 30 separate days, producing a printed record of over 3,000 pages, very little of which has been relied upon by appellants in their attack upon the regulations. The Appellate Division concluded that the Commissioner had liberally interpreted its order for the taking of additional testimony, saying:

> "In any case, the fairness of approach of the Commissioner in this matter is manifested not only by his liberality in interpretation of our prior order concerning the scope of the proofs to be admitted on behalf of plaintiffs, but also by his receptivity to a number of criticisms advanced by plaintiffs as reflected in the regulations as finally promulgated at the conclusion of the hearings." 75 N. J. Super. at 476, App. 19a.

Thus, the scope of the hearing was considered adequate under the State procedural law by the court that ordered the hearing. Nor is there any validity to appellants' lament that during the hearing the Commissioner refused to determine the "legal points at issue." Jurisdictional Statement, 6. This was the function of the New Jersey appellate courts. That function having been performed by the New Jersey courts, appellants cannot complain that due process was denied because an administrative officer had

earlier refused to pass upon legal issues at a hearing ordered for the limited purpose of taking evidence to supplement the record.

At pages 18 and 19 of their Jurisdictional Statement appellants also contend that their Federal due process rights are violated by the fact that they must file reports with the Department of Labor and Industry which may later be used against them in contested hearings. Not recognizing the obvious difference between a corporation like Humble Oil and Refining Company or Bethlehem Steel Company and an injured employee, they complain that it is a denial of their equal protection rights since employees are not required to file the same reports. Even more incredible is appellants' contention that the information thus supplied "might well be used at the time of the hearing without the knowledge of the employer * * *." This latter contention is entirely speculative. A judge or hearing officer *might* in any proceeding violate due process by considering evidence outside of the record without notifying the parties involved. The possibility of error or wrongdoing cannot avoid the requirement for filing accident reports which serve a proper governmental purpose. We know of no support for the proposition that reports cannot be required of a regulated industry if the reports may be used at a later date as evidence against the reporter. Records kept in the ordinary course of business are not immune from production in a legal proceeding by an adversary. Nor are such records declared confidential because an adversary has not or was not required to keep the same kind of records.

The extent to which a substantial Federal question is raised may be measured by the weakness of appellants' arguments.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the appeal be dismissed on the grounds that the appeal does not raise a substantial Federal question and the judgment of the court below rests upon adequate non-Federal grounds.

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Appellee,
Raymond F. Male, Commissioner,
Department of Labor and Industry,
State of New Jersey.

Of Counsel:

THEODORE I. BOTTER
First Assistant Attorney General
and
HOWARD H. KESTIN,
Law Assistant

Dated: August 30, 1963.

APPENDIX

Amended Petition for Declaratory Judgment—Esso Standard Oil Co., Bethlehem Steel Company, *et als.*

(Filed Oct. 31, 1958)

To the Honorable Judges of the Superior Court of New Jersey, Appellate Division:

Pursuant to leave granted by order of this Court on October 17, 1958, the amended petition of Esso Standard Oil Company, a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at 500 North Broad Street, Elizabeth, New Jersey; Bethlehem Steel Company, a corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at 1301 Hudson Street, Hoboken, New Jersey; Johns-Manville Products Corporation, a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at 200 North Main Street, Manville, New Jersey; General Motors Corporation, a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at Edgar Road, Linden, New Jersey; Samuel Hird & Sons, Inc., a corporation of the State of New Jersey and having its principal office at 7 Jewell Street, Garfield, New Jersey; Alan Wood Steel Company, a corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at Dover, New Jersey; Aluminum Company of America, a corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place

of business at Edgewater, New Jersey; American Can Company a corporation of the State of New Jersey and having its principal office at 15 Exchange Place, Jersey City, New Jersey; B. F. Goodrich Company, a corporation of the State of New York, qualified to do business in New Jersey and having a place of business at 550 Belmont Avenue, Haledon, New Jersey, the California Oil Company, a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at 1200 State Street, Perth Amboy, New Jersey; Crucible Steel Company of America, a corporation of the State of New Jersey and having its principal office at P. O. Box 32, Harrison, New Jersey; Harris Structural Steel Company, a corporation of the State of New York, qualified to do business in New Jersey; and having a place of business at New Market, New Jersey; International Harvester Company, a corporation of the State of New Jersey and having its principal office at 51 Newark Street, Hoboken, New Jersey; National Biscuit Company, a corporation of the State of New Jersey and whose agent for service of process is Edward J. O'Mara, One Exchange Place, Jersey City, New Jersey; Raybestos-Manhattan, Inc., a corporation of the State of New Jersey and having its principal office at 61 Willett Street, Passaic, New Jersey; Sears, Roebuck and Co., a corporation of the State of New York, qualified to do business in New Jersey and having a place of business at 168 Elizabeth Avenue, Newark, New Jersey; Socony Mobil Oil Co., Inc., a corporation of the State of New York, qualified to do business in New Jersey and having a place of business at Willingsport Road, Paulsboro, New Jersey; Westinghouse Electric Corporation, a corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at 95 Orange Street, Newark, New Jersey;

Amended Petition for Declaratory Judgment—Esso Standard Oil Co., Bethlehem Steel Company, et als.

American Smelting & Refining Company, a corporation of the State of New Jersey, and having its principal office at 15 Exchange Place, Jersey City, New Jersey; The International Nickel Company, Inc., a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at The Bayonne Works, Bayonne, New Jersey, and Ford Motor Co., a corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at Mahwah, New Jersey, respectfully shows and alleges:

1. Plaintiffs are engaged in various corporate enterprises in the State of New Jersey and are all subject to the applicable provisions of Title 34 of the New Jersey statutes, entitled Labor and Workmen's Compensation, R. S. 34:1-1, *et seq.*

2. Pursuant to the provisions of R. S. 34:15-77, plaintiffs carry their own workmen's compensation liability insurance. As such self-insurers, they bring this suit on behalf of themselves and on behalf of all others in the State of New Jersey similarly situated.

3. Defendant, Carl Holderman, is the Commissioner of Labor and Industry, duly appointed as such by the Governor of the State of New Jersey, pursuant to R. S. 34:1A-2 (1958).

4. The defendant promulgated the following supplement to the present rules and regulations of the Department of Labor and Industry and the Division of Workmen's Compensation.

Amended Petition for Declaratory Judgment—Esso Standard Oil Co., Bethlehem Steel Company, et als.

(SEAL)

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND INDUSTRY
Carl Holderman, Commissioner

July 25, 1958

Please reply to writer at this address:

20 W. Front St.
Trenton, N. J.

Notice.

To: ALL WORKMEN'S COMPENSATION INSURANCE CARRIERS AUTHORIZED TO DO BUSINESS IN NEW JERSEY AND ALL WORKMEN'S COMPENSATION SELF-INSURERS

The Department of Labor and Industry and the Division of Workmen's Compensation have approved and adopted the enclosed revised forms.

I. Employer's Report of Accidental Injury—Form WC-1 (5-56)

The revised form must be filed by self-insured employers or insurance carriers to report an accidental injury which shall cause a loss of time from regular duties beyond the working day or shift, on which the accident occurred, or which shall require medical treatment beyond ordinary first aid, or more than two treatments by a physician, and for the occurrence of an occupational disease, whether or not time is lost. This form must be completed and sent to the Department of Labor and Industry, 29 East Front St., Trenton, N. J., at the start of the second work day

after the injury occurred. In case of a fatal or serious injury, the form must be completed and forwarded immediately.

The Department will no longer require the filing of Employer's Supplemental Report of Accident Form WC-1A, which heretofore was attached at the base of form WC-1.

II. Initial Report of Accident—Form WC-2 (2-58)

The revised form must be filed by self-insured employers or insurance carriers as soon as it is known that the disability exceeds 7 days or that permanent injury results.

The worker will not be required to sign Form WC-3 as was the practice heretofore. It will be noted that Question 18, Detailed X-ray Findings, and Question 19, Detailed Diagnosis of Physician, are required to be filed with the Division on Form 3, but will not appear on Form WC-5, the Employee Copy, Question 20(a), General X-ray Findings, and Question 21, General Diagnosis, will also be filed with the Division on Form 3 and in addition will appear on the Employee Copy, Form 5.

Insurance carriers and self-insured are required to supply their own forms. They may be obtained from a printer of their own choosing so long as the forms are identical in format, content, color and quality as the enclosed sample.

/s/ CARL HOLDERMAN,
Commissioner Department of Labor and Industry.

CH:P:s
Enc.

The above notice, filed in the Office of the Secretary of State of the State of New Jersey on July 25, 1958 is supplement to the present rules and regulations of the Department of Labor and Industry and the Division of Workmen's Compensation. The rule is effective October 1, 1958.

5. The defendant amended the aforesaid supplement by filing with the Office of the Secretary of State, on October 15, 1958, the following instrument:

(SEAL)

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND INDUSTRY
CARL HOLDERMAN, COMMISSIONER
20 West Front Street
Trenton 25, New Jersey

Please reply to writer at this address:

October 15, 1958

The regulation dated and filed by me in the Office of the Secretary of State on July 25, 1958, with an effective date of October 1, 1958, is hereby amended as follows:

1. The words "ALL EMPLOYERS", shall be inserted immediately after "To:" in the heading of the Notice.

2. The designation "Form WC-1 (10-58)" shall be inserted in lieu of "Form WC-1 (5-56)" where the latter appears in the heading of Paragraph I of the

Notice and in the forms attached thereto which constitute a part of the regulation.

3. In Paragraph I of the Notice the words "each employer" shall be inserted in lieu of the words "self-insured employers or insurance carriers".

This amendant shall take effect immediately.

/s/ CARL HOLDERMAN
CARL HOLDERMAN, Commissioner
Department of Labor and Industry

6. Attached hereto and made a part hereof are the following forms, promulgated in accordance with the supplement and amendment set forth in paragraphs 4 and 5 above:

EXHIBIT A—WC-1 (10-58)—Employer's Report of Accidental Injury.

EXHIBIT B—WC-2 (2-58)—Initial Report of Accident.

EXHIBIT C—WC-2A (2-58)—Statement of Wages and Agreement to Care for Case.

EXHIBIT D—WC-3 (2-58)—Final Report of Accident.

EXHIBIT I—WC-4 (2-58)—Final Report of Accident.

EXHIBIT F—WC-5 (2-58)—Final Report of Accident.

EXHIBIT G—WC-6 (2-58)—Final Report of Accident.

Amended Petition for Declaratory Judgment—Esso Standard Oil Co., Bethlehem Steel Company, et als.

7. Plaintiffs allege that the amendments to the rules and regulations of the Department of Labor and Industry and the Division of Workmen's Compensation, promulgated as set forth in paragraphs 4 and 5 above, are illegal and void for the following reasons:

(a) Said amendments purport to require self-insured employers to file with the Division of Workmen's Compensation, Department of Labor and Industry, on Exhibit A, reports of all accidental injuries to employees which shall cause a loss of time from regular duties beyond the working day or shift, on which the accident occured, or which shall require medical treatment beyond ordinary first aid, or more than two treatments by a physician, and all occurrences of occupational disease, whether or not time is lost. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97, which require such reports only for accidents or compensable occupational diseases causing a disability extending beyond the waiting period (specified to be seven days by R. S. 34:15-14 (1945)) or causing any permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry to promulgate rules and regulations and defines the obligations of self-insured employers with respect to the reporting of accidental injuries. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(b) Said amendments purport to require the aforesaid reports to be made within two days after an injury occurs, or to be forwarded immediately in the case of a "fatal or serious injury". The aforesaid requirements are contrary

to the provisions of R. S. 34:15-97, which require the submission of reports only upon the expiration of the seven day waiting period or immediately upon the employer's having knowledge of a permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of self-insured employers with respect to the time within which accident reports are to be prepared and submitted. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(c) Said amendments purport to require self-insured employers to file with the Division of Workmen's Compensation, Department of Labor and Industry, on Exhibit D, a final report of accident, which is to contain medical X-ray findings, a general diagnosis of the injury and other medical information. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97 to the extent that they require information beyond the length of disability and the nature and extent of permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of self-insured employers with respect to the submission of medical information in reports of accidents. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute or otherwise.

(d) Said amendments purport to require self-insured employers to prepare on Exhibit F a copy of the final report of accident, referred to in subparagraph (c) above, including general X-ray findings and general diagnosis, to

be furnished to the employee. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97 to the extent that they require information beyond the length of disability and the nature and extent of permanent injury, and to the extent that they require the furnishing of reports to others than the Division of Workmen's Compensation of the Department of Labor and Industry. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of employers with respect to the submission of medical reports. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(o) Said amendments purport to require self-insured employers to supply, at their own expense, the forms for the reports which are to be submitted to the Division of Workmen's Compensation, Department of Labor and Industry. The aforesaid requirement is contrary to the provisions of R. S. 34:15-97, which requires that such forms be furnished to self-insured employers by the Division of Workmen's Compensation. The aforesaid statute places the obligation of acquiring forms upon the Division of Workmen's Compensation of the Department of Labor and Industry, and the attempt to impose this obligation upon self-insured employers by administrative rule constitutes an illegal assumption of legislative authority, by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

8. Plaintiffs further allege that to the extent said amendments purport to require self-insured employers to prepare on Exhibit F a copy of the final report of accident,

including general X-ray findings and general diagonis, to be furnished to the injured employee, such amendments are contrary to law and public policy in that the same will require the disclosure of information specifically prohibited by statute, R. S. 26:4-41 (1945) in particular, and will require the furnishing of information to the employee without regard to his own best interests.

9. Plaintiffs further allege that to the extent said amendments purport to require self-insured employers to prepare on Exhibit F a copy of the final report of accident, including general X-ray findings and general diagnosis, to be furnished to the injured employee, such amendments are calculated to and will have the effect of promoting workmen's compensation claims and litigation, thereby placing an undue burden upon the facilities of the Division of Workmen's Compensation and the Courts of this State and requiring the adjudication of claims made without regard to the legal obligation of the self-insured employers to make payments to compensation.

10. Plaintiffs further allege that said amendments and the forms promulgated in connection therewith and attached hereto as Exhibits A to G, inclusive, are so ambiguous, confusing and contradictory, as to render compliance with the purported requirements thereof impossible.

11. Plaintiffs further allege that said amendments to the rules are not necessary to carry out the purpose of the workmen's compensation statutes as required by R. S. 34:15-102 and are therefore illegal and void.

12. Plaintiffs further allege that said amendments are arbitrary, unreasonable, capricious, discriminatory and

oppressive and are therefore illegal and void and contrary to the provisions of the constitutions of the United States and of the State of New Jersey.

13. Plaintiffs further allege that to the extent Title 34 of the Revised Statutes of the State of New Jersey permits the valid promulgation of said amendments, said statutes are contrary to the provisions of the constitutions of the United States and of the State of New Jersey.

Wherefore, plaintiffs respectfully pray:

(1) That this Court adjudge that the purported amendments to the rules of the defendant, set forth in paragraphs 4 and 5 above, exceed the power of the Commissioner and the State Department of Labor and Industry, and are illegal and void.

(2) That the defendant be permanently enjoined from the promulgation and enforcement of such amendments, and

(3)That the petitioners have such other and further relief in the premises as may be just and proper.

WHARTON, STEWART & DAVIS
By JOHN W. FRITZ,
The Partner Acting for the Firm,
Attorneys for Petitioners,
50 West Main Street,
Somerville, New Jersey.

Form L & I-1 (7-60) (Employer's First Report of Accidental Injury or Occupational Disease)

(Opposite) ☛

FORM L & I-1 (7-60)

STATE OF NEW JERSEY

EMPLOYER'S FIRST REPORT OF ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE

This form (in triplicate) must be completed in the following cases only: (1) For every accidental injury which shall cause a loss of time from regular duties beyond the working day or shift on which the accident occurred, or (2) which shall require medical treatment beyond ordinary first-aid, or (3) for the occurrence of an occupational disease whether or not time is lost. Complete this form in accordance with the instructions on the back of this sheet—mail it as promptly as possible, in all cases NO LATER THAN THE START OF THE SECOND (2nd) WORK DAY AFTER INJURY OCCURRED. In case of a fatal or serious injury (one that requires hospitalization) complete and mail this form immediately. PLEASE NOTIFY THE BUREAU OF ENGINEERING AND SAFETY BY TELEPHONE OR TELEGRAM IN CASE OF A FATAL OR SERIOUS INJURY (TRENTON - EX 2-2131; NEWARK - MA 4-1414)

MAIL ORIGINAL (WHITE) TO:

MAIL DUPLICATE (YELLOW) TO:

DEPARTMENT OF LABOR AND INDUSTRY
Bureau of Engineering and Safety
29 East Front Street
Trenton 25, New Jersey

FOR INS CO USE ONLY
Claim No
Class No
Policy No
Policy date
STATE USE ONLY
Screened
Coded
Referred For Investigation
Filed

See detailed instructions on reverse side

RETAIN BLUE COPY FOR YOUR RECORDS — **PLEASE PRINT OR TYPE**

1. Full name of employee (See reverse)

2. Was employee unable to work because of injury or disease on any day after injury including Sunday or any day on which he would not usually work? YES NO

3. Employee's address — City — Zone — County

4. Occupation or job title

5. Was employee working in job title when injured? YES NO

6. Age

7. Sex

8. Employer (company name)

9. Unemp Comp Acct No (See reverse)

10. Employer's address — City — Zone — State

11. Nature of business (list type, principal product or services) (See reverse)

12. No. of employees (All classes)

13. Place of accident or exposure. (See reverse)

14. Date of Accident or Disease — Mo | Day | Yr | Time AM PM

15. Describe nature of injury and parts of body affected. (See reverse)

16. Name the object, machine, tool or substance which directly injured the employee. (See reverse)

17. How did the accident occur? (See reverse)

18. Hazardous condition—identify the hazardous physical condition or circumstance which permitted or occasioned the accident. (See reverse)

19. Agency of the accident—identify the object, substance or premises in or about which the previously named hazardous condition existed. (See reverse)

20. Unsafe act—identify the violation of a commonly accepted safe procedure which directly permitted or occasioned the accident if any. (See reverse)

MAIL DUPLICATE (YELLOW) TO:

Policy No

Policy date

STATE USE ONLY

Screened

See detailed instructions on reverse side

RETAIN BLUE COPY FOR YOUR RECORDS

PLEASE PRINT OR TYPE

Coded

Referred For Investigation

Filed

1. Full name of employee (See reverse)

2. Was employee unable to work because of injury or disease on any day after injury including Sunday or any day on which he would not usually work? YES NO

3. Employee's address — City — Zone — County

4. Occupation or job title

5. Was employee working in job title when injured? YES NO

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8. Employer (company name)

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20. Unsafe act—identify the violation of a commonly accepted safe procedure which directly permitted or occasioned the accident if any. (See reverse)

21

22. Did employee die? If yes, give date — Mo | Day | Yr

23. Name of attending doctor, if any — Address

24. Name of hospital — Address

Put 21 last.

3560-915-2301

PROOF OF PARTS: 1, 2, 3

DATE REPORT MADE 8½ x 11¾

BY _____
SIGNATURE OF PERSON PREPARING THIS FORM

TITLE _____

INSTRUCTIONS

Please complete all questions on this form in accordance with the directions below. On the basis of your answers the State of New Jersey is able to collect accident information for use in the Accident Reduction Programs of the Department of Labor and Industry. Questions 15 through 20 are for the purpose of accident cause analysis and are based upon the **American Standard Method of Recording Basic Facts Relating to the Nature and Occurrence of Work Injuries-Z16.2,** (Proposed Revision). Your cooperation in completing these questions fully is earnestly solicited. If the form is improperly completed it will be returned for correction.

Question No.

1. Give full name of employee as carried on payroll records.

9. Unemployment Compensation Account Number. This is the identification number used by the employer in paying his unemployment compensation tax for the location where the injured person is employed. The Account Number and the Standard Industrial Classification Code (S. I. C.) can be obtained from your copy of Quarterly Report of Wages (Form U. C. 27 B). The Account Number is on the 5th line of the address. The S. I. C. is the four digit number in the lower right hand corner of the address under the Account Number.

11. Nature of business. Describe the kind of business carried on at the location where the injured person is employed, i. e., manufacturing, wholesale, retail, construction, public utility, etc., and list the principal products manufactured, lines of trade, specific services or other activities. For example: manufacturing shoes, retailing men's clothes, trucking for hire, etc.

13. Place of accident or exposure. If the location of accident or exposure is different from the address shown on line 11, give sufficient information to pinpoint location by giving address, city, county, route or job location.

THE INSTRUCTIONS TO QUESTIONS 15 THROUGH 20 ARE INTENDED ONLY TO INDICATE THE TYPE OF ANSWER AND NOT THE LENGTH OF THE ANSWER. THE ANSWER SHOULD BE IN DETAIL.

15. Name the injury in terms of its principal physical characteristic and the part or parts of the body affected by the injury. For example: Amputation of right index finger; fracture of ribs; burn of right hand; contusions of leg; lacerations of both knees; multiple injuries; etc. Example of occupational disease; dermatitis of right arm; silicosis; etc.

16. Name the object, machine, tool, substance or bodily motion which directly injured the employee. This has reference to the source of injury. For example: The machine or object he struck against or which struck him; the vapor or poison he inhaled or swallowed; the thing he was lifting, pushing or pulling, etc. For example: If his injury was a steam burn inflicted by steam escaping from a broken connection in a high-pressure steam line, name the steam as the thing which produced the injury.

17. This question, (accident type classification) is directly related to the source of the injury named above and explains how that source of the injury produced the injury. For example: struck against machine; struck by falling brick; fell to different level; fell and struck head on floor; finger caught in machine; etc. Describe incident fully.

18. This refers **strictly** to the hazardous characteristics of objects and substances or of the environment, not to the characteristics of persons.

No.

1. Give full name of employee as carried on payroll records.

9. Unemployment Compensation Account Number. This is the identification number used by the employer in paying his unemployment compensation tax for the location where the injured person is employed. The Account Number and the Standard Industrial Classification Code (S. I. C.) can be obtained from your copy of Quarterly Report of Wages (Form U. C. 27 B). The Account Number is on the 5th line of the address. The S. I. C. is the four digit number in the lower right hand corner of the address under the Account Number.

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18. This refers **strictly** to the hazardous characteristics of objects and substances or of the environment, not to the characteristics of persons. For example: defects of tools, machinery, etc.; dress or apparel hazards; environmental hazards, such as oil on floor, dust in air, etc.; hazardous methods or procedures; inadequate guarding, etc. Describe fully. Do not omit a hazardous condition merely because that condition resulted from an unsafe action or violation of orders or instructions or because no effective method of eliminating the hazard is known or recognized as feasible.

19. Name the object, substance or premises which either produced or contained the previously named hazardous condition. When the hazardous condition classification has been designated as "None" or "Undetermined" the agency shall be similarly designated.

20. Name the unsafe personal action which directly caused or permitted the occurrence of the previously designated accident type (Question 17) whether committed by the injured or another. In general, a personal action should be designated as unsafe only when there was a reasonable and less hazardous procedure which could have been followed. Describe fully.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 326.

HUMBLE OIL & REFINING COMPANY, *et als.*,
Appellants,

v.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

BRIEF OPPOSING MOTION TO DISMISS AND APPENDIX THERETO.

T. GIRARD WHARTON,
JOHN W. FRITZ,
Attorneys for Appellants,
50 West Main Street,
Somerville, New Jersey.

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CONSTITUTION CITED.

California, Art. I, § 13 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 326.

HUMBLE OIL & REFINING COMPANY, *et als.*,
Appellants,

v.

RAYMOND F. MALE, Commissioner, Department of Labor and Industry, State of New Jersey,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

BRIEF OPPOSING MOTION TO DISMISS.

This reply to the Motion to Dismiss herein is necessitated by appellee's printing, as an appendix to his Motion, only one of two petitions brought up by this appeal. As pointed out at page 10 of appellants' Jurisdictional Statement, a second petition was filed subsequent to the administrative hearing. It served to consolidate all plaintiffs in one action and was a prime pleading and a portion of the record before both the Appellate Division and the Supreme Court of New Jersey. It is set forth in full as the appendix hereto.

ARGUMENT.

POINT I.

A substantial federal question is raised by this appeal.

While appellants have endeavored in their Jurisdictional Statement to anticipate the argument set forth by the appellee in his Motion, we believe a brief reply should be made.

The Attorney General insists in his Motion that delegation of legislative power to state officers and agencies is insulated from federal due process guarantees by a state determination. This is the effect of the argument appearing at page 13 of his Motion. We respectfully submit that as long as the Fourteenth Amendment to the Constitution of the United States has vitality this proposition is unsound. This amendment was particularly designed and has been consistently utilized to prevent *state action* from transgressing the bounds of due process. To argue that a determination in the state deprives this Court of the opportunity to review because a state statute (as contrasted with a federal statute) is involved, is to urge a substantial emasculation of the Fourteenth Amendment.

Nor do we agree that the cases cited by the appellee support his conclusion.

Welsh v. *Swasey*, 214 U. S. 91 (1909), in the paragraph quoted, holds only that the Supreme Court of the United States will not disturb a state court's determination of validity *under the state constitution*, suggesting that this type determination does not raise a federal question.

To the extent that *Erie R. R. Co.* v. *Board of Public Utility Commissioners,* 254 U. S. 394 (1921), is said to suggest that the Supreme Court of the United States is disinterested in state delegation problems, *Southern Railway Co.* v. *Virginia,* 290 U. S. 190 (1933), clears the air. As in the *Erie R. R.* case, the *Southern Railway* case involved a state statute purportedly delegating authority to the state highway commissioner to eliminate grade crossings in the public interest. When the commissioner asserted this authority, without public hearing but in accordance with the delegation of the statute, the railway objected. The Supreme Court of Virginia held that the statute effectively delegated the authority claimed. This Court reversed as violative of the Fourteenth Amendment, saying at page 196:

> "The claim that the questioned statute was enacted under the police power of the State and, therefore, is not subject to standards applicable to legislation under other powers, conflicts with the firmly established rule that every state power is limited by the inhibitions of the XIV Amendment. [Citations omitted.]"

Both *Ohio* v. *Akron Metropolitan Park District,* 281 U. S. 74 (1930) and *O'Neill* v. *Leamer,* 239 U. S. 244 (1915), treat the delegation problem in a one sentence summary manner sandwiched among other substantial grounds for the holdings of the cases. The Attorney General here argues that these single sentences, extracted from the opinion, form a sound foundation for the broad generalization that the Supreme Court of the United States has no jurisdiction to consider any state delegation. While not at all clear

because of the summary treatment, in both these cases it is more likely that the Court was refusing to review the propriety of the repository of the delegated power (courts in each instance), rather than the constitutionality of the delegation in such terms of reference as standards and due process. This view is the probable one particularly in the light of *Southern Railway Co.* v. *Virginia, supra.*

In *Neblett* v. *Carpenter,* 305 U. S. 297 (1938)—the only case cited by appellee which is subsequent in time to *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495 (1935), or *Panama Refining Co.* v. *Ryan,* 293 U. S. 388 (1935)—the portion quoted by the appellee at page 15 of his motion, without saying so, appears to be simply a refusal of this Court to review a determination of the Supreme Court of California with respect to a claim of unconstitutionality *under the State constitution.* The distinction finds support in a number of ways. First, the word "again" in the quotation links this holding to the preceding several paragraphs which deal with construction of *the State law* by the highest Court of the State. Secondly, such an interpretation is supported by the second syllabus preceding the opinion. Thirdly, reference to the opinion below shows that Neblett conceded the constitutionality of the questioned provisions of the code but asserted a federal due process question not in the delegation, but in the plan and procedure employed by the administrator. *Carpenter* v. *Pacific Mutual Life Ins. Co.,* 10 Cal. 2d 307, 329, 74 P. 2d 761, 774 (1937). Finally, the California Constitution contains a due process clause. Art. I, § 13.*

* As noted in appellants' Jurisdictional Statement, the Constitution of New Jersey does not contain a due process clause.

It should be noted as well that apparently none of the cited cases involved any substantial argument with respect to standards in the delegation of legislative authority.

It is submitted that at least since the *Schechter* case, the propriety of the standards in a delegation question is a due process inquiry under the Fourteenth Amendment to the United States Constitution. The Court below, in disregarding the *Schechter* and *Panama Refining* holdings in favor of the wartime *Yakus* and *Lichter* cases, acknowledged this fact.

Conclusion.

It is respectfully submitted that a substantial federal question is presented and that the appellee's motion to dismiss should be denied.

Respectfully submitted,

T. Girard Wharton,
John W. Fritz,
Attorneys for Appellants.

SUPPLEMENTAL APPENDIX.

Petition for Declaratory Judgment—New Jersey Manufacturers Ins. Co., Mitchell-Bissell Company, Humble Oil Company, *et als.*

(Filed August 29, 1960.)

To the Honorable Judges of the Superior Court of New Jersey, Appellate Division:

The Petition of the New Jersey Manufacturers Casualty Insurance Company, a Corporation of the State of New Jersey, having its principal place of business at 363 West State Street, Trenton, New Jersey; Mitchell-Bissell Company, a Corporation of the State of New Jersey, having its principal place of business at 825 Brunswick Avenue, Trenton, New Jersey; Humble Oil Company, formerly Esso Standard Oil Company, a Corporation of the State of Delaware, qualified to do business in New Jersey and having its principal place of business at 500 North Broad Street, Elizabeth, New Jersey; Bethlehem Steel Company, a Corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at 1301 Hudson Street, Hoboken, New Jersey; Johns-Manville Products Corporation, a Corporation of the State of Delaware, qualified to do business in New Jersey and having its place of business at 200 North Main Street, Manville, New Jersey; General Motors Corporation, a Corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at Egar Road, Linden, New Jersey; Samuel Hird & Sons, Inc., a Corporation of the State of New Jersey and having its principal office at 7 Jewell Street, Garfield, New Jersey; Alan Wood Steel Company, a Corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at Dover, New Jersey; Aluminum Company of America, a Corporation of the State of Penn-

sylvania, qualified to do business in New Jersey and having a place of business at Edgewater, New Jersey; American Can Company, a Corporation of the State of New Jersey, having its principal office at 15 Exchange Place, Jersey City, New Jersey; B. F. Goodrich Company, a Corporation of the State of New York, qualified to do business in New Jersey and having a place of business at 550 Belmont Avenue, Haledon, New Jersey; The California Oil Company, a Corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at 1200 State Street, Perth Amboy, New Jersey; Crucible Steel Company of America, a Corporation of the State of New Jersey, having its principal office at P. O. Box 32, Harrison, New Jersey; Harris Structural Steel Company, a Corporation of the State of New York, qualified to do business in New Jersey, and having a place of business at New Market, New Jersey; International Harvester Company, a Corporation of the State of New Jersey having its principal office at 51 Newark Street, Hoboken, New Jersey; National Biscuit Company, a Corporation of the State of New Jersey, whose agent for services of process is Edward J. O'Mara, 1 Exchange Place, Jersey City, New Jersey; Raybestos-Manhattan, Inc., a Corporation of the State of New Jersey, having its principal office at 61 Willett Street, Passaic, New Jersey; Sears, Roebuck and Co., a Corporation of the State of New York, qualified to do business in New Jersey and having a place of business at 168 Elizabeth Avenue, Newark, New Jersey; Socony Mobil Oil Company, Inc., a Corporation of the State of New York, qualified to do business in New Jersey and having a place of business at Billingsport Road, Paulsboro, New Jersey; Westinghouse Electric Corporation, a Corporation of the State of Pennsylvania, qualified to do business in New Jersey and having a place of business at 95 Orange Street, Newark, New Jersey; American Smelting & Refining Company, a Corporation of the State of New Jersey, having its

principal office at 15 Exchange Place, Jersey City, New Jersey; The International Nickel Company, Inc., a Corporation of the State of Delaware, qualified to do business in New Jersey and having a place of business at the Bayonne Works, Bayonne, New Jersey; and Ford Motor Company, a Corporation of the State of Delaware, qualified to do business in New Jersey, and having a place of business at Mahwah, New Jersey respectfully shows and alleges:

1. The Plaintiff, New Jersey Manufacturers Casualty Insurance Company, is a Corporation of the State of New Jersey, incorporated under an Act of the Legislature of the State of New Jersey, entitled, "an Act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State" approved April 3, 1902 (L. 1902, c. 134) and under the Acts supplementary thereto and amendatory thereof (R. S. 17:17-1 et seq.). It is primarily engaged in the business of writing casualty insurance and, more particularly, workmen's compensation insurance in the State of New Jersey and elsewhere. As such, it brings the suit on behalf of itself and on behalf of all others in the State of New Jersey similarly situate.

2. The Plaintiff, Mitchell-Bissell Company, was incorporated in New Jersey on June 6, 1894 and is primarily engaged in manufacturing. It is an insured employer in the State of New Jersey and carries its workmen's compensation insurance with the New Jersey Manufacturers Casualty Insurance Company. As an insured employer, it brings this suit on behalf of itself and on behalf of all others in the State of New Jersey similarly situate.

3. All Plaintiffs, except New Jersey Manufacturers Casualty Insurance Company and Mitchell-Bissell Company, aforesaid, are engaged in various corporate enterprises in the State of New Jersey, and, pursuant to the

provisions of R. S. 34:15-77, carry their own workmen's compensation liability insurance. As such self-insurers, they bring this suit on behalf of themselves and on behalf of all others in the State of New Jersey similarly situate.

4. The Plaintiffs are all subject to the applicable provisions of Title 54 of the New Jersey Statutes, entitled "Labor and Workmen's Compensation", R. S. 34:1-1, *et seq.*

5. The Plaintiffs are all Plaintiffs in one of two actions presently pending in the Superior Court of New Jersey, Appellate Division, entitled *New Jersey Manufacturers Casualty Insurance Company, et al.* v. *Carl Holderman, Commissioner,* Docket No. A-68-58 and *Esso Standard Oil Company, et al.* vs. *Carl Holderman, Commissioner,* Docket No. A-60-58. Plaintiffs' respective petitions and amended petitions therein, as the case may be, together with exhibits or schedules appended thereto, are incorporated herein and made a part hereof as though set forth at length.

6. Defendant, Raymond F. Male, is the successor to Carl Holderman, as Commissioner of Labor and Industry, State of New Jersey, duly appointed as such by the Governor of the State of New Jersey, pursuant to R. S. 34:1A-2 (1948).

7. Subsequent to the institution of the actions set forth in paragraph 5 above, the Superior Court of New Jersey, Appellate Division, by Order of April 14, 1959, in said actions ordered administrative hearings in relation to the rules and regulations promulgated as aforesaid and as set forth, by reference, in paragraph 5 above. Said Order is incorporated herein by reference and made a part hereof as though set forth at length.

8. Pursuant to said Order, the Defendant set the matter down for Hearing and took certain proofs and other evi-

dence. Following the receipt of these proofs and other evidence, the Defendant filed with the Superior Court of New Jersey, Appellate Division, in the actions set forth in paragraph 5 above, a Record, Findings of Fact and Conclusions. A Supplement to the Rules and Regulations of the Department of Labor and Industry and the Division of Workmen's Compensation and certain revised forms denominated L & I-1 (7-60), WC-1 (7-60), WC-2 (7-60), WC-3 (7-60), WC-4 (7-60), WC-5 (7-60), WC-6 (7-60), and WC-3A (7-60). Said Record, Findings of Fact and Conclusions, A Supplement of the Rules and Regulations of the Department of Labor and Industry and the Division of Workmen's Compensation, and the said forms are incorporated herein by reference and made a part hereof as though set forth at length, having hitherto been filed with this Court.

9. The Defendant also filed the said Supplement to the Rules and Regulations of the Department of Labor and Industry and the Division of Workmen's Compensation, together with the forms immediately referred to above, on July 13, 1960 in the Office of the Secretary of the State of New Jersey, to be "effective as of the termination date of the legal actions" set forth in paragraph 5 above.

10. Plaintiff, New Jersey Manufacturers Casualty Insurance Company alleges that the said Supplement to the Rules and Regulations of the Department of Labor & Industry and the Division of Workmen's Compensation and the forms pursuant thereto, promulgated as set forth in paragraphs 5, 6, 7, 8 and 9 above are illegal and void for the following reasons.

(a) Said supplement purports to require each insured employer to complete and mail to the Department of Labor and Industry, Bureau of Engineering and Safety and to his insurance carrier the aforesaid form L & I-1 (7-60),

designated "Employer's First Report of Accidental Injury or Occupational Disease" upon the following stated happenings:

> "(1) For every accidental injury which shall cause a loss of time from regular duties beyond the working day or shift on which the accident occurred or (2) which shall require medical treatment beyond ordinary first aid, or (3) for the occurrence of an occupational disease whether or not time is lost."

The above provision is not provided for by, and is in contravention of R. S. 34:15-96, wherein it is provided that:

> "Every employer carrying insurance as required by article 5 of this chapter shall make report in accordance with the terms of his insurance policy upon the happening of any accident of the occurrence of any compensable occupational disease in his establishment".

(b) Said supplement purports to require each insured employer to prepare and complete, upon the above stated conditions, an Employer's First Report of Accidental Injury or Occupational Disease, Form L & I-1 (7-60) which form contains some twenty-three questions prepared by the Commissioner of Labor and Industry. The said form imposes upon an employer obligations and requirements which are dissimilar to and in excess of those which may be required by the "terms of his insurance policy" and is in contravention of and not authorized by R. S. 34:15-96.

(c) Said supplement, insofar as it requires Form L & I-1 (7-60) to be prepared and completed under the circumstances stated in (a) above, and insofar as it is required to contain the information noted in (b) above, is in excess of the limitations set forth in R. S. 34:15-96 and constitutes

an illegal assumption of legislative authority by the Commissioner of Labor and Industry in violation of said statute.

(d) Insofar as said Form L & I-1 (7-60) shall require the reporting of an accident or the setting forth of information in addition to requirements of the terms of an employer's insurance policy, it is an impairment of the obligation of contract and in contravention of the Constitution of the State of New Jersey and the Constitution of the United States.

(e) The multiple information required of the employer on the said Form L & I-1 (7-60), required to be completed and forwarded at the start of the second work day after the injury occurred entails an unreasonable burden upon the employer and is in contravention of R. S. 34:15-96, 98.

(f) Said Form L & I-1 (7-60), demands the compilation and submission of data which bears no reasonable relationship to the obligation of the employer or its insurance carrier to make payments of compensation or to the reasonable functions of the Division of Workmen's Compensation, such obligation or function arising only after the expiration of 7 days from the date of injury where time has been lost or upon the occurrence of permanent disability or the contraction of a compensable occupational disease, as set forth in R. S. 34:15-96, 98.

(g) Said Form L & I-1 (7-60) demands the compilation and submission of data which bears no reasonable relationship to the provisions relating to the submission of statistical data as set forth in R. S. 34:1-49, 52 and, in any event, constitutes the illegal assumption of legislative authority by the Commissioner of Labor and Industry in violation of said statute.

(h) Said modification and supplement purports to require employers to file with the Division of Workmen's Compensation, on the "Employer's Report to Div. of Workmen's Compensation of Accidental Injury or Occupational Disease", Form WC-1 (7-60), the date when the employee returned to work or will probably return and requires of the insurance carrier to advise the Division, on the Final Report of Accident, Form WC-3 (7-60); the employer, on Final Report of Accident, Form WC-4 (7-60); the injured workmen, on Final Report of Accident, Form WC-5 (7-60); and itself as insurance carrier, on Final Report of Accident, WC-6 (7-60); of the date the injured resumed work. This information is in contravention of and unauthorized by the provisions of R. S. 34:15-98, wherein it is relevant to set forth only that the "employee has recovered so as to be *able* to resume work" (emphasis supplied). The requirement of this information exceeds the limitation set forth in the said statute and constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute, and bears no reasonable relationship to the purpose for which such information might reasonably be sought.

(i) Said Form L & I-1 (7-60) demands the compilation and submission of data and its completion and mailing within a time which bears no reasonable relationship to the functions of the Department of Labor and Industry or its several component Divisions and Bureaus, the said requirements being without the jurisdiction of the Commissioner of Labor and Industry to impose and in contravention of the several reporting and record-keeping requirements set forth in R. S. 34:1-1, *et seq.*

(j) Said modification and supplement requires the insurance carrier to complete and mail to the Division of

Workmen's Compensation a form entitled "Insurer's Initial Notice of Accident, and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case," designated WC-2 (7-60). Said form entails the submission of data concerning the cost of medical aid to be paid, which data is unknown and unobtainable within the period of 21 days after the happening of an accident or obtaining knowledge of an occupational disease. The requirement of its submission is unreasonable, arbitrary, capricious and in direct contravention of the uncontradicted evidence adduced before the Commissioner of Labor and Industry in the Hearing set forth above. The remainder of the said form requires the re-submission of data already possessed by the Division of Workmen's Compensation and serves no reasonable function thereof.

(k) Said modification and supplement purports to require the insurance carrier to file with the Division of Workmen's Compensation, Department of Labor and Industry, on said Form WC-3 (7 60), a Final Report of Accident, which is to contain Detailed X-ray Findings (Question 18), Detailed Diagnosis of Physician (Question 19), General X-ray Findings (Question 20A), and General Diagnosis (Question 21), and other medical information. The aforesaid requirements are contrary to the provisions of R. S. 34:15-98 in that they require information beyond the period of disability and subsequent to the time the "employee has recovered so as to be able to resume work," as provided in R. S. 34:15-98. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of insurance carriers with respect to the submission of medical information in reports of accidents or compensable diseases. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an assumption of legislative authority by the Commissioner of Labor and Industry in violation of such statute and otherwise.

(l) The said Supplement, insofar as it relates to the subject of (k), *supra*, is directly contrary to the express legislative intention to require only certain minimum information directly related to the obligation to pay compensation as set forth in R. S. 34:15-96, 97, 98 and in contravention of the specific provisions of R. S. 34:15-100 insofar as the latter refers to individual cases in which the information requested is only obtainable when the employer or insurance carriers shall be directed so to do.

(m) Said Supplement purports to require the insurance carrier to file with the Division of Workmen's Compensation, Department of Labor and Industry for the specific purpose of distribution to the employee, on said Form WC-5 (7-60), general information already known to the employee, with the exception of Questions 20a, 21, 22, 27 and 28. The said form, with the exception of the questions noted, is contrary to R. S. 34:15-98 and is onerous, unreasonable and oppressive, insofar as it unnecessarily requires a third person to advise the injured workman of information already possessed by him without the pendency of any litigation.

(n) Said Supplement purports to require the insurance carriers to file with the Division of Workmen's Compensation, Department of Labor and Industry, on said Forms WC-3 (7-60) and WC-5 (7-60), in the latter instance for the publication by mailing to the address of the employee, information required in the first instance by Questions 18, 19, 20a, 21, 22, 27 and 28, and, in the second instance, insofar as the same is required by Questions 20a, 21, 22, 27, 28, Detailed X-ray Findings, Detailed Diagnosis of Physician, General Diagnosis and X-ray Findings, and other medical information. The aforesaid requirements are contrary to the provisions of R. S. 34:15-98 and contrary to the provisions of R. S. 34:15-99, insofar as the same is in *pari*

materia therewith. The submission of the required data, insofar as it relates to medical information, will be forwarded to the employee without regard to his own best interests and the requirement therefor is in contravention of public policy. The same would require an insurance carrier, in specific instances, to make public through its physician or otherwise, a diagnosis of a venereal disease, contrary to the provisions of R. S. 26:4-41. The requirement that the insurance carrier directly apprise the employee of the information contained in the questions hereinabove set forth is in direct contravention of the uncontradicted evidence adduced and is an arbitrary, capricious and unreasonable requirement.

(o) To the extent that the said R. S. 34:15-96, 97, 98 require employers and insurance carriers to prepare and submit informational forms to the Division of Workmen's Compensation and to the employee without requiring the same or similar disclosures by the employee, which forms may be used as evidence of the data therein contained, the said sections are unconstitutional as denying the said employers and insurance carriers due process and equal protection of the law.

(p) To the extent that Forms L & I-1 (7-60), WC-1 (7-60), WC-2 (7-60), WC-3 (7-60), WC-4 (7-60), WC-5 (7-60), WC-6 (7-60) and WC-3A (7-60) are required to be submitted to the Department of Labor and Industry and/or the Division of Workmen's Compensation and are further to be made available to or mailed directly to litigant or potential litigant employees, without requiring the same or similar disclosures by employees or barring the receipt of said forms in evidence in administrative hearings, the use of said forms and the requisite of their submission is unconstitutional as denying the said employers and insurance carriers due process and equal protection of the law.

(q) To the extent that the said forms are designed to be used and will be used by hearing officials in all cases, their submission and use encourages and fosters the consideration of non-evidential and ex parte statements all of which is violative of the intent of R. S. 34:15-56, in contravention of manifest public policy and effects a denial of due process and equal protection of the law.

(r) This Plaintiff further alleges that the said Supplement and the said Forms promulgated in connection therewith as aforesaid, are so ambiguous, confusing, duplicitous and contradictory as to make compliance with the purported requirements thereof impossible.

(s) This Plaintiff further alleges that said Supplement is not necessary to carry out the purpose of the Workmen's Compensation Statute, as required by R. S. 34:15-102, and is therefore illegal and void.

(t) This Plaintiff further alleges that said Supplement is arbitrary, unreasonable, capricious, discriminatory and oppressive and is therefore illegal and void and contrary to the provisions of the Constitution of the United States and the Constitution of the State of New Jersey.

(u) This Plaintiff further alleges that the effect of said Form WC-5 (7-60), designed to be forwarded to the injured is calculated to and will have the effect of promoting litigation and unduly burdening the facilities of the Division of Workmen's Compensation and the Courts of this State, in contravention of public policy, insofar as the same is required to be prepared and designed to be mailed to the employee, without regard to the duration or severity of the injury or occupational disease and without regard to the obligation of the employer or its insurance carriers to make payment of compensation.

(v) This Plaintiff further alleges that to the extent that the information demanded on the said Forms is unnecessary

to carry out the intent of Chapter 187, L. 1924, and is unnecessary to reasonably "check on the operations of the insurance company", then the provisions of R. S. 34:15-96, 97, 98 are unconstitutional and void in that they fail to set up reasonable criteria for the guidance of their administration and enforcement and constitute an unconstitutional delegation of legislative authority.

(w) This Plaintiff further alleges that to the extent that the information demanded on the said Forms is unnecessary to carry out the expressed intent of Chapter 187, L. 1924 and is unnecessary to reasonably "check on the operations of the insurance company", then the actions of the Commissioner of Labor and Industry in the absence of reasonable criteria are void and constitute an unconstitutional assumption of legislative authority.

(x) This Plaintiff further alleges that the Commissioner of Labor and Industry, in 1956, sought authority from the Legislature of the State of New Jersey, to promulgate the same or similar rules which presently are sought to be enforced. To that end, there were incorporated in Assembly No. 568, Assembly Bills 1956, referred to as a General Revision of the Workmen's Compensation Act, pertinent Paragraphs 11 and 12, attached as an Exhibit to the petition set forth in paragraph 5 above. At the time the legislation was introduced certain other parts thereof were passed and became law, but the cited paragraphs were refused passage by the Legislature. The Commissioner of Labor and Industry has herein sought to accomplish, by the assumption of Legislative power, the end which was unsuccessfully sought to be accomplished through proper legislation.

(y) The said Supplement, together with the said Forms, were promulgated by the Commissioner of Labor and Industry without proper or sufficient hearing, thereby depriving

the parties affected of the right to introduce evidence or otherwise object or make their position known relative to the said Supplement and Forms. This course, affecting the substantial rights of this Plaintiff, is arbitrary and capricious and deprived the Plaintiff of due process of law and is otherwise in violation of the Constitution of the State of New Jersey and the Constitution of the United States.

(z) The said Supplement and Forms are in direct contravention of the legislation enacted as part of the laws of 1924, Chapter 187, as consistently interpreted by the Division of Workmen's Compensation, charged with their administration, to require the submission of certain information requested on forms previously employed by the Division from that time, some of which forms are attached to the petition set forth in paragraph 5 above, and also, the said Supplement and Forms are in direct contravention to the long honored interpretation by the Division under the statutes as they have existed unchanged since 1924.

(aa) Insofar as said Supplement and Forms, and particularly said Form L & I (7-60), requires a telephone call or telegram in the case of every injury requiring hospitalization, they are unreasonable, arbitrary, capricious and contrary to law.

(bb) The conduct of the Hearing by the Commissioner of Labor and Industry was violative of the Order of this Court of April 14, 1959, entered in the causes set forth in paragraph 5 above and was arbitrary, unreasonable and violative of due process.

(cc) The "Record and Findings of Fact and Conclusions of Commissioner of Labor and Industry" filed herein are devoid of factual findings sufficient to support the conclusions reached and the modification which proceeded therefrom and evince a capricious and arbitrary disregard of and failure to consider the evidence adduced.

(dd) This Plaintiff further alleges that to the extent that Title 34 of the Revised Statutes of the State of New Jersey permits the valid promulgation of the said Supplement and its modifications, said statutes are contrary to the provision of the Constitutions of the United States and of the State of New Jersey.

11. Plaintiff, Mitchell-Bissell Company alleges that the said Supplement to the rules and regulations of the Department of Labor and Industry and the Division of Workmen's Compensation and the forms pursuant thereto, promulgated as set forth in paragraphs 5, 6, 7, 8 and 9 above, are illegal and void for the following reasons:

(a) This Plaintiff repeats, incorporates and makes a part hereof as though set forth at length all the allegations of all sub-paragraphs of paragraph 10 above.

12. All Plaintiffs other than those in paragraphs 10 and 11 above, that is to say, all self-insured Plaintiffs, allege that the said Supplement to the Rules and Regulations of the Department of Labor and Industry and the Division of Workmen's Compensation and the forms pursuant thereto, promulgated as set forth in paragraphs 5, 6, 7, 8 and 9 above, are illegal and void for the following reasons:

(a) These Plaintiffs repeat and incorporate and make a part hereof, as though set forth at length, all of the relevant allegations of all sub-paragraphs of paragraph 10 above insofar as the same is applicable to the self-insured plaintiffs.

(b) Said Supplement purports to require self-insured employers to file with the Department of Labor and Industry, on said Form L & I-1 (7-60), reports of all accidental injuries to employees,

> "* * * which shall cause a loss of time from regular duties beyond the working day or shift on which

the accident occurred or (2) which shall require medical treatment beyond ordinary first aid or (3) for the occurrence of an occupational disease whether or not time is lost".

The aforesaid requirements are contrary to the provisions of R. S. 34:15-97, which require such reports only for accidents or compensable occupational diseases causing a disability extending beyond the waiting period (specified to be seven days by R. S. 34:15-14 (1945)) or causing any permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry to promulgate rules and regulations and defines the obligations of self-insured employers with respect to the reporting of accidental injuries. The exceeding of such limitations and the extension of such obligation by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(c) Said Supplement purports to require the aforesaid reports to be made no later than the start of the second work day after an injury occurs, or to be forwarded immediately in the case of a "fatal or serious injury". The aforesaid requirements are contrary to the provisions of R. S. 34:15-97, which require the submission of reports only upon the expiration of the seven day waiting period or immediately upon the employer's having knowledge of a permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of self-insured employers with respect to the time within which accident reports are to be prepared and submitted. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(d) Said Supplement purports to require self-insured employers to file with the Division of Workmen's Compensation, Department of Labor and Industry, on said Form WC-3 (7-60), a Final Report of Accident, which is to contain medical x-ray findings, a general diagnosis of the injury and other medical information. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97 to the extent that they require information beyond the length of disability and the nature and extent of permanent injury. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligations of self-insured employers with respect to the submission of medical information in reports of accident. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(e) Said Supplement purports to require self-insured employers to prepare on said Form WC-5 (7-60), a copy of the Final Report of Accident, referred to in sub-paragraph (c) above, including general x-ray findings and general diagnosis, to be furnished to the employee. The aforesaid requirements are contrary to the provisions of R. S. 34:15-97 to the extent that they require information beyond the length of disability and the nature and extent of permanent injury, and to the extent that they require the furnishing of reports to others than the Division of Workmen's Compensation of the Department of Labor and Industry. The aforesaid statute limits the power of the Department of Labor and Industry and defines the obligation of employers with respect to the submission of medical reports. The exceeding of such limitations and the extension of such obligations by administrative rule constitutes an illegal

assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(f) Said Supplement purports to require self-insured employers to supply, at their own expense, the forms for the reports which are to be submitted to the Division of Workmen's Compensation, Department of Labor and Industry. The aforesaid requirement is contrary to the provisions of R. S. 34:15-97, which requires that such forms be furnished to self-insured employers by the Division of Workmen's Compensation. The aforesaid statute places the obligation of supplying such forms upon the Division of Workmen's Compensation of the Department of Labor and Industry, and the attempt to impose this obligation upon self-insured employers by administrative rule constitutes an illegal assumption of legislative authority by the Commissioner of Labor and Industry, in violation of such statute and otherwise.

(g) These Plaintiffs further allege that to the extent said Supplement purports to require self-insured employers to prepare on said Form WC-5 (7-60), a copy of the Final Report of Accident, including general x-ray findings and general diagnosis, to be furnished to the injured employee, such amendments are contrary to law and public policy in that the same will require the disclosure of information specifically prohibited by statute R. S. 26:4-41 (1945) in particular, and may require the furnishing of information to the employee without regard to his own best interests.

(h) These Plaintiffs further allege that to the extent said Supplement purports to require self-insured employers to prepare on said Form WC-5 (7-60), a copy to the Final Report of Accident, including general x-ray findings and general diagnosis, to be furnished to the injured employee,

such amendments are calculated to and will have the effect of promoting workmen's compensation claims and litigation, thereby placing an undue burden upon the facilities of the Division of Workmen's Compensation and the Courts of this State and requiring the adjudication of claims made without regard to the legal obligation of the self-insured employers to make payments of compensation.

(i) Said Supplement and the Forms promulgated in connection therewith are so ambiguous, confusing and contradictory, as to render compliance with the purported requirements thereof impossible.

(j) Said Supplement is not necessary to carry out the purpose of the Workmen's Compensation Statutes as required by R. S. 34:15-102 and are therefore illegal and void.

(k) Said Supplement is arbitrary, unreasonable, capricious, discriminatory and oppressive and is therefore illegal and void and contrary to the provisions of the Constitutions of the United States and of the State of New Jersey.

(l) These Plaintiffs further allege that to the extent Title 34 of the Revised Statutes of the State of New Jersey permits the valid promulgation of the said Supplement, said statutes are contrary to the provisions of the Constitutions of the United States and of the State of New Jersey.

WHEREFORE, Plaintiffs respectfully pray:

(1) That this action be for all purposes consolidated with the actions set forth in paragraph 5 above.

(2) That this Court adjudge that the purported amendments to the rules of the Defendant, set forth in paragraphs 4 and 5 above, exceed the power of the Commissioner and the State Department of Labor and Industry, and are illegal and void.

(3) That the Defendant be permanently enjoined from the promulgation and enforcement of such amendments, and

(4) That the Petitioners have such other and further relief in the premises as may be just and proper.

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Mitchell-Bissell Company, Plaintiffs.

WHARTON, STEWART & DAVIS,
Attorneys for the Remaining Plaintiff
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By: JOHN W. FRITZ,
The Partner Acting for the Firm.

MICROCARD
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